

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 207.

THE UNITED STATES, APPELLANT,

vs.

J. FRANCISCO CHAVEZ AND PUEBLO OF ISLETA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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## 1 UNITED STATES OF AMERICA,

*Territory of New Mexico, ss:*

Be it remembered that heretofore, to wit, on the 9th day of September, 1896, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

## 2 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }

*vs.*

THE UNITED STATES. }

*To the honorable chief justice and associate justices of said court:*

Your petitioner, J. Francisco Chavez, resident of the county of Valencia, in the Territory of New Mexico, brings this, his petition, against the United States, and thereupon shows to the court the following:

1. On the 5th day of November, 1716, Captain Antonio Gutierrez presented to Captain Felix Martinez, the then governor and captain-general of New Mexico, his petition asking for a grant of a piece of land below Isleta, apparently at a distance of two leagues, which formerly had been held by Christobal de Tapia, and setting forth that the boundaries of said land were, on the north, an arroyo de alamos, which comes down from the hills; on the south, the pueblo of San Clemente; on the east, the Rio del Norte, and on the west, the hills of the Rio Puerco; and on the same day and year aforesaid the said governor, in the name of the King, made to the said petitioner the grant that he asked for, as he described it, and as Christobal de Tapia formerly enjoyed it, and directed Captain Beltazar Romero to place the said petitioner in possession. Copies of said petition and grant, in triplicate, are filed herewith and marked "Exhibit A," the original thereof being in the office of the surveyor-general for New Mexico as archive No. 315, being a part of the original Spanish archives in the custody of said office.

2. After the making of said grant, as aforesaid, the said Antonio Gutierrez entered into possession of said land, and he and his lawful successors in title from that time down to the present have had continuous peaceable and uninterrupted possession of the land embraced in said grant.

3. To the best of the knowledge, information, and belief of this petitioner there are no persons in possession of or claiming said tract of land, or any part thereof, adversely to the claim of this petitioner.

4. The said land is situate in county of Valencia, in the Territory of New Mexico, and the boundaries thereof as are hereinbefore set forth, but it is expressly averred that the eastern boundary, as hereinbefore set out, refers to the old river bed of the Rio Grande del Norte, which at the northern portion of said grant is about two miles further east than the present bed of the river. It is impossible to state, even approximately, the quantity of land embraced in said grant, as no survey thereof

has ever been made, but it is estimated to be between fifteen and twenty thousand acres, a map thereof showing the same as near as may be being filed herewith.

5. No claim for the said grant has heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

6. This petitioner avers that the title to said grant was complete and perfect at the date when the United States acquired sovereignty in New Mexico; and that this petitioner has succeeded in part to the rights of the original grantee, the said Antonio Gutierrez.

4 7. This petitioner further avers that to the best of his information and belief the arroyo del alamos which is hereinbefore mentioned as the northern boundary cannot now be identified, probably owing to changes on the earth's surface which have denuded the arroyo, if it still exists, of all trees and which may have entirely obliterated the arroyo itself; and that no tradition of its location has been preserved for the reason that this tract of land and one immediately north of it, which had been the property of Joaquin Sedillo, had become united in the ownership of a single person as early as the year 1734.

Your petitioner therefore prays that the validity of the said title may be inquired into and decided by this honorable court and that the same may be confirmed to the heirs and legal representatives of the said Antonio Gutierrez.

J. FRANCISCO CHAVEZ,  
*Petitioner.*

By F. W. CLANCY,  
*His Solicitor.*

5 And be it further remembered that thereafter, to wit, on the 11th day of November, A. D. 1896, an abstract of title was filed in the office of the clerk; which said abstract of title is in the words and figures following, to wit:

6 In the Court of Private Land Claims sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ }  
vs. }  
UNITED STATES. }

*Abstract of title.*

The claimant is unable to present any direct conveyance from the original grantee or from his heirs with which he is in any way connected. He relies upon the papers contained in archive No. 178 in the office of the surveyor-general for New Mexico, to show that the original grantee, Antonio Gutierrez, took possession of the said tract of land and afterwards transferred the same to Diego Padilla, and that said Diego Padilla conveyed said land to Diego Borrego, who in turn conveyed the same to



Nicolas de Chavez, these conveyances being made in the years 1734 and 1736. Claimant files herewith copies and translations in triplicate of said archive No. 178.

Claimant avers that it appears from archive No. 371, in the office of the surveyor-general for New Mexico, that at some time prior to the year 1785 the tract claimed had become the property of Clemente Gutierrez, the said archive No. 371 is a record of proceedings as to the estate of said Clemente Gutierrez, and claimant files herewith copies and translations in triplicate of so much thereof as shows the inventory of all the real estate belonging to said Clemente Gutierrez and the *hijuela* given to each of the heirs showing their respective shares of said real estate.

Claimant relies upon the following described deeds to connect him with the title of said Clemente Gutierrez and through him with the original title to the grant :

7 Deed of Jose Lorenzo de la Pena, for himself and his sister Mariana and his brother Jose Rafael de la Pena, to Francisco Xavier Chavez, dated September 20th, 1818, for an undivided fifth of the Bosque de los Pinos, bounded on the north by the lands the pueblo of Isleta, on the south by the lands known as those of Los Lentos, on the east by the hills, and on the west by the Rio del Norte, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clement Gutierrez, to Francisco Xavier Chavez, for an undivided interest in the ranch of the Bosque de los Pinos, bounded on the north by the league of the pueblo of Isleta, on the south by residents of Valencia, on the east the plain, and on the west the Rio del Norte, dated October 19, 1821, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

A deed from Juan Nepomuceno Gutierrez and Apolonia Gutierrez to validate the sale made by their father, Lorenzo Gutierrez, of the portion to which he and Lorenza Gutierrez were entitled in the Bosque de los Pinos, dated December 27th, 1839, a translation of which deed, made by the official translator of the office of the surveyor-general of New Mexico in the year 1855, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Claimant avers that the originals of the three deed' above described were filed in the office of the surveyor-general in 1855, and that they appear to have been withdrawn from that office by J. Bonifacio Chavez on the       day of       , 187       , and can not now be found, although the official translations made at that time have been preserved.

The said Francisco Xavier Chavez, to whom the said deeds were made, was the grandfather of this claimant, and claimant has inherited from his said grandfather an interest in the property conveyed by said deeds.

8 And be it further remembered that thereafter, to wit, on the 27th day of October, A. D. 1897, an answer was filed in the office

of the clerk, which said answer is in the words and figures following, to wit:

9 In the Court of Private Land Claims, Santa Fe district, 1896.

J. FRANCISCO CHAVEZ }  
                                   *vs.* } No. 274.  
 UNITED STATES. }

*Answer.*

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause, says: That it has not sufficient information on which to base a belief as to whether or not it is true, as alleged in said petition, that on November 5, 1716, one Antonio Gutierrez presented to Captain Felix Martinez, the then governor and captain-general of New Mexico, his petition asking for a grant of land below Isleta, as described in plaintiff's petition; and therefore prays that petitioner be held to make strict *proof* thereof.

Further answering, defendant states that it has not sufficient information on which to base a belief as to whether or not it is true, as stated in plaintiff's petition, that the said governor, in the name of the King, made to the said petitioner the grant asked for, as described in plaintiff's petition, and directed Captain Baltazar Romero to place said petitioner in possession. Defendant therefore prays that said petitioner be held to make strict proof of said allegation.

Defendant denies that said Antonio Gutierrez entered into the possession of said land, as alleged in plaintiff's petition; and further denies that he is the lawful successor in title from that time down to the present, having had continuous, peaceable, and uninterrupted possession of the land embraced in said grant.

Defendant, further answering, denies that the title to said grant was complete and perfect at the date when the United States acquired sovereignty of New Mexico, and further denies that plaintiff has succeeded in part to the rights of the said Antonio Gutierrez, or that he has held or claimed to hold under the said Antonio Gutierrez.

Defendant admits that no claim for said grant has heretofore been considered or acted upon by Congress, or the authorities of the United  
 10 States, or been heretofore submitted to the authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

As to all other allegations of plaintiff's petition, defendant shows that it has no information to enable it to found a belief as to the truth or falsity of the same, and defendant therefore denies said allegations and each of them, and asks that plaintiff be put to strict proof thereof.

Now, having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,  
 U. S. Attorney.

11 And be it further remembered that thereafter, to wit, on the 13th day of November, 1896, the petition of the pueblo of Isleta, to be made copetitioner, was filed in the office of the clerk; which said petition is in the words and figures following, to wit:

12 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }  
*vs.*  
 UNITED STATES. }

*To the honorable chief justice and associate justices of said court:*

Your petitioner, the pueblo of Isleta, a body corporate, situated in the county of Valencia, Territory of New Mexico, respectfully prays to be allowed to offer in this cause, as a copetitioner with the said J. Francisco Chavez, and adopts as its own, all of the allegations of the petition of said J. Francisco Chavez, heretofore filed herein, with the same effect as though they were here at length represented, and in terms made applicable to this petitioner, the same as in said petition they are applicable to said J. Francisco Chavez, consenting and agreeing that the answer filed on behalf of the respondents may be taken and considered as our answer to the claim of this petitioner, the same as though it had appeared originally as a copetitioner with said Chavez; and join in the prayer of the petition of said Chavez that the validity of the title therein set off may be inquired into and decided by this honorable court, and that the same may be confirmed to the heirs and legal representatives of Antonio Gutierrez.

G. L. SOLIGNAC,

*Attorney for the Corporation of the Pueblo of Isleta.*

13 And be it further remembered that on the 13th day of Nov., 1897, the same being a day of the regular May term, 1897, holden at the city of Santa Fe, Territory of New Mexico, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.*  
 THE UNITED STATES. } No. 274. Antonio Gutierrez grant.

This cause coming on to be heard upon the petition of the pueblo of Isleta on file in this cause, and being submitted by counsel, G. L. Solignac appearing for said petitioner and W. H. Pope, esq., assistant United States attorney, appearing for defendants, the court being now sufficiently advised in the premises, grants the prayer of said petition.

It is therefore ordered by the court that said pueblo of Isleta be, and it is hereby, permitted to come into this cause as a copetitioner with said J. Francisco Chavez.

14 And be it further remembered, that on the 5th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* } No. 274. Antonio Gutierrez grant.  
 UNITED STATES. }

The above-entitled cause now coming on to be heard there appeared Frank W. Clancy, esq., for the plaintiffs; W. H. Pope, esq., appeared for the said defendant, The United States; G. L. Solignac, esq., representing the Pueblo of Isleta. The parties announcing themselves ready, the trial of the cause was proceeded with, and the said cause not being completed the further hearing of the same was postponed until to-morrow.

15 And be it further remembered that thereafter, to wit, on the 6th day of May, A. D. 1896, the same being a day of the regular May term, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* }  
 UNITED STATES. }

The above-entitled cause now coming on to be heard, all the attorneys in the cause being present, all the testimony in said cause was presented and the arguments were postponed until to-morrow.

16 And be it further remembered, that on the 7th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* } No. 274. Antonio Gutierrez grant.  
 THE UNITED STATES. }

The above-entitled cause now coming on to be further heard, all the attorneys in the cause being present, after hearing the arguments of the counsel the court took the cause under advisement.

17 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

18 In the Court of Private Land Claims, Santa Fe, New Mexico, May term, 1897.

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }  
*vs.* } No. 274.  
 THE UNITED STATES. }

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }  
*vs.* } No. 275.  
 THE UNITED STATES. }

On May 5th, 1897, the above-named cases came up for trial, and the following proceedings were had therein in open court:

Appearances: Frank W. Clancy, esq., for J. Francisco Chaves; G. L. Solignac, esq., for the Pueblo of Isleta; William H. Pope, esq., assistant United States attorney, for the Government.

Mr. CLANCY. I will read the petition.

Mr. CLANCY. We offer in evidence archive number 315, from the office of the surveyor-general of New Mexico (marked "Plaintiff's Exhibit A").

Also archive number 178 (marked "Plaintiff's Exhibit B").

Also a portion of archive number 371, that is, all of that archive that shows the inventory of the real estate belonging to Clemente Gutierrez and giving to each of the heirs their respective parts of the real estate (marked "Plaintiff's Exhibit C").

We also offer in evidence a deed made September 20th, 1818, by Jose Lorenzo de la Pena, for himself and his sister, Mariana, and his brother, Jose Rafael de la Pena, to Francisco Xavier Chaves, for an undivided fifth of the Bosque de los Pinos, this being an official translation made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico (marked "Plaintiff's Exhibit D").

Also offer in evidence a deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente Gutierrez, to Francisco Xavier Chaves, for an undivided interest  
19 in the ranch of the Bosque de los Pinos, dated October 19th, 1821, and of this deed we offer an official translation made by the official translator in the office of the surveyor-general for New Mexico, in the year 1855 (marked "Plaintiff's Exhibit E").

We also offer in evidence the translation of a deed made by the official translator of the office of the surveyor-general for New Mexico in the year 1855, from Juan Nepomuceno Gutierrez and Apolonia Gutierrez, to validate a sale made by their father, Loranzo Gutierrez, in the Bosque de los Pinos, dated December 27th, 1839 (marked "Plaintiff's Exhibit F").

We also offer in evidence an original deed, or document of evidence of title at least, dated May 3rd, 1808, from Lorenzo Gutierrez, in favor of the Indians of the Pueblo of Isleta (marked "Plaintiff's Exhibit G").

We also offer in evidence a report by Manuel Lucero, an alcalde, to the governor of New Mexico, dated June 14th, 1826, as to certain disputes among the Indians, with regard to other lands in question here (marked "Plaintiff's Exhibit H").

We also offer in evidence an official certificate made by Jose Antonio Chaves Duran, who was an alcalde mayor of the Pueblo of Isleta, as to the making of a measurement of these lands which are now claimed in these two cases, on the west side of the river between the lands of Isleta and the lands of Los Lentos (marked "Plaintiff's Exhibit I").

Mr. POPE. We shall move to strike them out if upon an examination they are not competent.

MAY 6TH, 1897, 10 A. M.

J. FRANCISCO CHAVES, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination, as follows:

By Mr. CLANCY:

Q. What is your name, age, and residence?

A. J. Francisco Chaves; my residence is Progreso, in Valencia County, New Mexico; age, nearly 64.

Q. Are you acquainted with the tract of land that is commonly known as Bosque de los Pinos, in Valencia County, New Mexico; and, if so, when did you first become acquainted with that tract of land?

20 A. Yes, sir; I think about 1839 I became personally acquainted with it; at that time I lived at Los Padillas, which is now in the county of Bernalillo, the place of my birth.

Q. Who lived at the Bosque de los Pinos at that time?

A. Retainer of my grandmother's, who was then the owner of the place, by the owner, Jose Manuel Olguin.

Q. Who was the father of your grandfather?

A. Francisco Xavier Chaves.

Q. When did he die, if you know?

A. I only know by the records; I think in 1829, before I was born.

Q. From what has been told you and the family, do you know where he lived at the time of his death and for some years before that time?

A. He lived always at Los Padillas.

Q. Then he never resided at Bosque de los Pinos?

A. Never resided at Bosque de los Pinos.

Q. Do you know what, if anything, he did with the possession of Bosque de los Pinos before his death?

A. He possessed it, farmed it, kept cattle and sheep upon it; it was wooded from there to Los Padillas, a large body of timber there at that time; there is a pretty good sized body of timber there now.

Q. Since the time that you have had personal knowledge of that property who has had possession and control of it from that time down to the present?

A. My father, subsequently my mother, after my father's death in 1844, and then my mother married Dr. Connolly, and then it went to her heirs after her death. If you desire the names of the children I will give their names.

Q. Has that possession been in any way disturbed or encroached upon by other people?

A. Never.

Q. What are the boundaries of that particular piece of land called the Bosque de los Pinos?

A. Bounded on the north by the Isleta Indian Pueblo lands; on the east by the old river bed; a stone marks the northeast boundary; and on the south by the town of Peralta; on the west by the present river.

Do you know under what title or deeds of conveyance, if any, your family has claimed and possessed that tract of land?

A. Yes, sir; we claim title under, I believe, Clemente Gutierrez and his heirs.

21 Q. Who were the owners of that piece of land?

A. At the time that my grandfather purchased—

Q. That is, you claim through his heirs?

A. There are several of them; Clemente Gutierrez, he already died; it was through his will.

Q. Examine this paper which I have offered in evidence in this case and marked "Plaintiff's Exhibit D, E, and F," and state if they are translations of the deeds from the Gutierrez heirs under which your family claim the Bosque de los Pinos.



A. Yes, sir, I believe they are correct translations of the copies of the deeds made to my grandfather.

Q. Do you know what has become of the originals of th'se deeds?

A. I do not, unless they are here in the surveyor-general's office.

Q. Have you made any search for them among your papers or those of your family?

A. Yes, sir; they are not at our place at all. I will state here that when the rebel troops had possession of our house in 1862—about the month of April, 1862—that nearly every paper, we had a very large amount of property, was destroyed, and a great many valuable in real estate were discovered afterwards among the corrals and the outhouses. Some are entirely lost.

Q. Who was J. Bonifacio Chaves?

A. He was my youngest brother.

Q. Is he living or dead?

A. He is dead.

Mr. CLANCY. Mr. Pope, will you admit that the records in the office of the surveyor-general show that the originals of these deeds were withdrawn from that office by J. Bonifacio Chaves about the year 1871, which accounts for their absence from the files of that office, although it does not account for what became of them afterwards?

Mr. POPE. I will admit this.

Q. Have you made at any time, or caused to be made, search among the papers of your brother's for the originals of these deeds?

A. Yes, sir; I have, and I have not discovered anything. His wife became quite sick and she died in this city six or seven years ago, and I asked her to give me all the papers of my brother had that belonged to our family, and she gave me some papers, but none of these papers were among them, because I have all the papers that I got from her.

22 Q. Are you acquainted with the lands on the west side of the present river lying between the pueblo grant to the Pueblo of Isleta and the lands of Los Lentes?

A. Yes, sir.

Q. In whose possession have these lands been since you have known them?

A. Well, originally—many years ago, say probably forty years ago—they were held chiefly by the people of the town of Los Lentes. There is a river runs up very near the sand hills and from that point south it is called Los Charcos, means the pools, water collects, and runs, overflows the acequia and remains for a long time, and close to the sand hills the Indians occupied a place there and the Indians of Isleta, but now, but most of them are within, I think, a mile of the town of Los Lentes, are occupied by the Indians of the town of Isleta, about a mile from the present site of Los Lentes is occupied by the people of Los Lentes, and from there north, probably two miles and a half, I do not know, well, about four miles, is occupied entirely by the Indians now.

Q. Have you ever heard that stretch of land called the compra?

A. Yes, sir; always that land has been called the compra; that is the way they spoke of that land.

Q. Have you ever known or heard from whom they purchased these lands?

A. No, I never.

Q. That is all.

Mr. POPE. That is all.

Mr. CLANCY. It is admitted by the United States to be a fact that the Pueblo of Isleta has had open and notorious possession and use of lands on the west side of the Rio Grande along between the boundary of the pueblo and the lands of the Los Lentes as far back as the memory of the oldest man living within the pueblo can extend, and that such possession and use have been claimed to be under a purchase from the heirs of Clemente Gutierrez, of which some documentary evidence has been presented in the paper executed by Lorenzo Gutierrez, dated May 3rd, 1808, and that said paper which is marked "Plaintiff's Exhibit G" and also Plaintiff's Exhibits H and I come from the custody and control of the officers of said pueblo, who have had them as far back as memory can extend.

23 Mr. CLANCY. I desire to offer in evidence the original petition and grant to Ana de Manzanares for the tract of land commonly known as the San Clemente grant, and also the decree of this court confirming the claim for that grant (marked "Plaintiff's Exhibits J and K").

Mr. POPE. No objection.

Q. Col. Chaves, are you familiar with the section of country where are situated the lands in question in this case known as the San Clemente and Isleta grants?

A. Yes, sir; I am.

Q. And with the location of towns and other natural objects in that vicinity?

A. Yes, sir.

Q. Will you examine this sketch map and state where upon that the location of Los Lunas, Los Lentes, Los Pinos, the Rio Grande, and its old bed, whether they are approximately accurate or not?

A. This map that is made is substantially correct; it shows the lines of the Isleta grant and the lands in question, the San Clemente grant, and the Jose Sedillo grant, as far as I am able to ascertain the grant of Gutierrez; it also shows the Rio Grande now, and also the old bed of the river as it ran many years ago, beyond the memory of any living man, and the Rio Puercio, also Los Lunas and Los Lentes.

Mr. POPE. Q. Your only knowledge of the location of the Sedillo and Gutierrez grants is derived from these title papers you presented here?

A. Yes, sir; and the gentleman's (Mr. Pope) argument at the last term of court.

Mr. CLANCY. I will offer this sketch map in evidence (marked "Plaintiff's Exhibit L").

SHERARD COLEMAN, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Clancy as follows:

Q. What is your business in life?

A. I am surveyor by occupation.

Q. Have you had occasion in connection with your business as surveyor to make any examination of the section of country just south of the pueblo of Isleta in this Territory?

A. Yes, sir.



24 Q. Can you from the knowledge derived from that examination stat' what is the distance from Los Lentes to the pueblo of Isleta?

A. At the time I made this survey it was six miles 39 chains and 54 links in a measured line from the church of the pueblo of Isleta with the old ruins of San Clemente; these old ruins of San Clemente are just below the town of Los Lentes, I should say about 600 yards from the chapel.

Q. In a straight line from the chapel to the ruins?

A. In a straight line in a southeasterly direction.

Q. In a north and south direction about how far is the chapel of Los Lentes to these old ruins?

A. Not over two or three hundred yards, I should think, without making a measurement of the place in question.

Q. That is all.

Mr. POPE. That is all.

SANTA FE, NEW MEXICO, June 4th, 1897.

I hereby certify that the above and foregoing six and a part pages contain a full, true, and correct transcript of all the testimony offered in evidence in the above-named cases.

W. J. McPHERSON,

*Official Stenographer C. P. L. C.*

25

PLAINTIFF'S EXHIBIT A. ARCHIVE 315

[Translation.]

1.

No. 449.

1716

*To the governor and captain-general:*

I, Captain Antonio Gutierrez, a resident of the town of Albuquerque and a native of this Kingdom, appear before you in due legal form, and I state that, being very much in need of lands on which to plant in order to support my family, and also to the end that my sheep may have room to scatter out, and there being an uncultivated and unoccupied tract of lands below Ysleta, apparently at a distance of two leagues, which formerly was held by Cristobal de Tapia, of which tract will you be pleased to make me a grant in the name of His Majesty in the same manner as it was held by said Cristobal de Tapia, and, as you be pleased to grant it to me, will you also order that the real possession be given me, designating to me boundaries and landmarks, in order that no prejudice may result to me in its possession?

Wherefore I ask and pray, with due humility, that you will be pleased to make me the grant that I ask for in the name of His Majesty, as one who represents his royal person, and I swear in the name of God our Lord, and by the sign of the Holy Cross, that this my petition is not in bad faith, and whatsoever is necessary, etc.

ANTONIO GUTIERREZ. [SCROLL.]

NOTE.—I ask and pray that the boundaries belonging to said tract be designated to me—on the north an arroyo with some cottonwood trees

that comes down from the hills, on the south the pueblo of San Clemente, on the east the Del Norte River, and on the west the hills of the Puerco River; and I swear in due legal form that my petition is not in bad faith, and whatever is necessary.

ANTONIO GUTIERREZ. [SCROLL.]

*Presentation.*

At the town of Santa Fe on the fifth day of the month of November, in year one thousand seven hundred and sixteen, before me, Captain Felix Martinez, Governor and Captain-General of this Kingdom and provinces of New Mexico and castellan of its forces and garrisons for His Majesty, it was presented by the party therein named.

*Decree and grant.*

And it having been examined by me, I treated it as properly presented in accordance with law, and, in view of the fact that it is His Majesty's will that his lands should be settled and fortified, in his royal name I make to the petitioner the grant that he asks for, as he describes it and as Cristobal de Tapia formerly enjoyed it, without prejudice to a third party who may have a better right, and I command Captain Baltazar Romero that as soon as he be notified with this my decree he shall place the petitioner in real possession; and this shall serve him as a sufficient formal title for his protection, and when these proceedings shall have been had he will transmit this grant and possession to my civil and military secretary in order that he make a certified copy thereof, and that this original petition remain in the said archives; and in witness thereof I signed it with my civil and military secretary.

FELIX MARTINEZ. [SCROLL.]

Before me,

MIGUEL TENORIO DE ALBA, [SCROLL.]

*Civil and Military Secretary.*

26

PLAINTIFF'S EXHIBIT A, ARCHIVE 315.

[Spanish copy.]

*Senor Goror. y Captn. General:*

El Capitan Antonio Gutierrez, vecino de la villa de Albuquerque y originario de este rno., ante Vsa. pareseo en la major forma que haya lugar en derecho y digo: Allándome mui desacomodado de tierras en que poder sembrar para mantener mis obligaciones, y juntamente para que mi ganado se explaye, y allándose yermo y despoblado un sitio de tierras abajo de la ysleta á distancia al pareser de dos leguas, que antiguamente lo poseia Xptoal de Tapia, el qual sitio se a de servir Vsa. haserme mez. de él segun y como lo posecia dicho Xptoal de Tapia, en nombre de su Magd. y juntamente mandará siendo servido de conserdemelo el que se me de la real posesion, señalándome linderos y mojoneros para que posindolo no me pueda pidar (?) perjuicio, por todo lo qual á Vsa. pido y suplico con todo rendimiento sea mui servido conserderme la

merced que pido en nombre de su Magestad, como quien representa su divina imagen y juro por Dios nuestro Senor y la senal de la santa cruz, esto mi escrito no ser de malicia y en lo nesario, &a.

ANTONIO GUTIERRES.

OTROSI.—A Vsa. pido y suplico se me señalen los linderos que son pertecientes á dicho sitio, por el norte un arroyo de Alamos que baja de las lomas, por el sur el pueblo de San Clemente, por el oriente al rio del Norte, y por el poniente las lomas del rio Puerco, y juro en forma de derecho mi escrito no ser de malicia y en lo nesario.

ANTONIO GUTIERRES.

PRESENTACION.—En la villa de Santa Fe, en cinco dias del mes de noviembre de mil setesientos y diez y seis años, ante mi el Capitan  
27 Don Felix Martinez, Governador y Capitan General de este reyno y provincia del Nuevo Mejico y castellano de sus fuerzas y presidios por su Magestad auto de merced, la presentó el contenido y por mi vista la hube por presentada en quanto ha lugar en derecho y en atencion á ser la mente de su Magestad el que sus tierras se pueblen y fortalezcan, en su real nombre le conbedo la mersed que el suplicante pide como lo expresa y antiguamente gosaba Xptobal de Tapia, sin perjuicio de terzero que mejor dercho yenga y mando al Capitan Baltazar Romero que luego que sea requerido con este mi decreto, meta en posesion real al suplicante y este le sirva de bastante titulo en forma para su resguardo; y hechas las diligencias esta merced y posesion las remita á mi secretario de governacion y guerra para la testimonie; y quede este original en el dicho archibo; y para que conste, lo firmo con mi Secretario de Governacion y Guerra.

FELIX MARTINEZ.

Ante mi:

MIGUEL THENORIO DE ALBA.

*Secretario de Gobernacion y Guerra.*

28

PLAINTIFF'S EXHIBIT B, ARCHIVE 178.

Certified copy was made of these titles in the year of 1736 on August 31.

SANCHEZ. [RUBRIC.]

Let it be notorious and know all who this letter of real sale may see that there appeared before me Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, and as I say personally appeared Don Diego Vasquez Borrego, whom I certify I know, and he said: That he gave and in effect did give in real sale to Don Nicolas de Chaves a tract of land for the pasturage of small stock, neat cattle, and horses, and also agricultural lands which he acquired by real sale from the heirs of Joaquin Sedillo, and he also said that he gave and did give together with this real sale and annexed thereto a donation which to the said Don Diego Basques Borrego was made by Diego Padilla, in which appeared the free and general administration in order that he might make use according to his will of the said tract, the one and the other situate below Isleta, commonly called San Martin, and as it appears by his instruments their boundaries are on the north

lands of the pueblo of Isleta and on the west the Rio Puerco, on the south the house of the rancho of Diego Padilla, the said donation being included in this conveyance, and on the east the Rio Grande, and as I say the said Diego Vasques Borrego makes and gives the said sale to the said Don Nicolas de Chaves in the price and sum of six hundred dollars, which the said Borrego acknowledges to have received to his

content and satisfaction, and he says he is contented, paid, and  
 29 satisfied, and in regard to which he delivers his instruments of title and he renounces his own right and domicile and the laws of non numerata pecunia proof and payment, and that of things held in common which treats of the one-half of the just price; that he gives them free from all tax, tribute, and other burthen in order that he may enjoy them for himself, his children, heirs, and successors, and that in case the said tract is worth more or may be worth more he makes him gift and donation of the same, pure, mere, irrevocable, which the law calls *inter vivos*; in which he renounces all the laws which may be in his favor, and no suit nor demand shall be brought against the same by the said Don Diego Borrego, his children, heirs, and successors, and in case any should be brought that they be not heard either in court or out of it; and he gives all power necessary to the justices of His Majesty in order that with all rigor of law they may require and compel him to the fulfilment of this instrument as if it were by definitive decision of a competent judge; and if any suit be brought against the said lands or tract he will appear for the defense until he leaves him in quiet and peaceable possession; and for its warranty he pledges his person and his property, real and movable, that which he now has and that which he may hereafter have, with regard to which he renounces the law *sit eumbenerit* and *jurisdicionen*; thus he executed it before me, the said *alcalde mayor*, to which I certify, and he signed it with me and two assisting witnesses acting before me by delegated authority (*juez receptor*) on the present paper because the stamped paper is not current in these parts; it is done on the sixteenth day of August of the year one thousand seven hundred and thirty-six.

30 DIEGO BASQUES BORREGO. [RUBRIC.]  
 Ju. GONZALES BAS. [RUBRIC.]

Witness:  
 PHELIP BARELA. [RUBRIC.]  
 ISIDRO SANCHEZ. [RUBRIC.]

31 Se sacó testimonio de estas escrituras el año de 1736 *as.* en 31 de Agosto.  
 Foxas 8, No. 319.

SANCHEZ. [RUBRIC.]

Sea notorio, y sepan quantos esta carta de benta rl. vieren, como compareció ante mi el Capp. Ju. Gonzales Bas, *alcalde mayor* y capp. á guerra de dha. villa su *jurisdicion*, y como digo compareció Dn. Diego Vazquez Borrego, á quien doy fe conosco, y dixo que dava, y con efecto dió en benta rl. á Dn. Nicolas de Chaves un sitio de tierras para agostar ganados menores, y mayores, y caballadas, con tierras de lavor de pan coxer, el qual hubo por benta rl. á los erederos Juachin Sedillo, con

mas dixo que dava y dió junto con esta benta real en ella anexo, vna donazion que al dho. Dn. Diego Basques Borrego le yso Diego Padilla, en la qual consta la libre y genl. administracion para de ella vsara á su voluntad el qual sitio vno, y otro sitio abajo de la ysleta que comunmente llaman San Martin, y como consta por sus ystrumentos y corren sus linderos por la parte de norte con tier'as del Pueblo de la Ysleta, y por el poniente con el rio Puercos, por el zur con la caza del rancho de Diego Padilla entrando en esta escritura la referida donacion, y por el oriente con el rio Del Norte, y como digo, dha. benta se la ase y da dho. Diego Vasques Borrego, al susodho. Dn. Nicolas de Chaves por el precio y quantia de seys cientos ps., los que confiesa dho. Borrego aber resebido á su contento y satisfacion de que se da por contento, pagado, y satisfecho, sobre que para ello le entrega sus ystrumentos y renuncia su proprio fuero y domisilio, y las leyes de la numerata pecunia, preuba y paga y la de mancomunidad que abla sobre la mitad del justo precio que se las da libres de todo senso tributo, y otra ypoteca para que las gose por si sus hijos erederos y susesores, y que si acaso dho. sitio valga mas ó baler pueda, le ase gracia y donacion pura, mera, yrebocable que el derecho llama yntervivos, sobre que renuncias todas las layes que á su favor pueda alegar, sobre que no le será puesto pleyto ni demanda alguna por el dho. Dn. Diego Borrego, sus hijos erederos, y susesores, y que si acaso se lo pusieren que no sean oydos en jgycio ni fuera del, sobre que da poder quan bastante se requiere á las justicias de su Magd., para que con todo rigor le compelan y apremien al cumplimiento de esta escritura como si fuera por sentencia definitiva de Jues competente de *Jues Competente*, y que si algun pleyto se les ofresieren sobre las dhas. tierras ó sitio, sacarara la cara para defenderlo asta dejarlo en quieta y pasifica posesion, y al saneamiento obliga su persona y bienes rayses y aueble abidos y por aber, sobre que renuncia la ley sit eumbenerit e jurisdiccionen; asi lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó conmigo, y dos testigós de mi asistencia auctuando ante mi como Jues Reseptor; en el presente papel porque el sellado no corre en estas partes; es fecho. en dies y seys de agto. de mil setesientos treynta y seys as.

DIEGO BASQUES BORREGO. [RUBRIC.]  
 JU. GONSALEZ BAS. [RUBRIC.]

Tto: PHILIP BARELA. [RUBRIC.]  
 Tto: YSIDRO SANCHEZ. [RUBRIC.]

33

*Carta de donacion.*

En esta Villa de San Phe. de Alburquerque, en siete dias del mes de henero del año de mil setesientos y treynta y quatro, ante mi, el Capp. Ju. Gonzalez Baz, alcalde mayor y capp. á guerra de dha. villa y su jurisdiccion, compareció Diego Padilla, á quien doy fee conosco, quien delante de dos testigos dixo: que daua y dió graciosamente á Dn. Diego Borrego, es, á saber, un pedaso de tierra de el qual, como mas largamente consta, tubo, y pose en donacion que á su favor de dho. Padilla le otorgó el Capp. Antto. Gutierrez; y corren sus linderos por el norte con tierras de Joachin Sodillo; por el oriente, con el rio Del Norte; por

el sur con tierra de dho. Diego Padilla, sirviendo de señal en dho. lindero la mediania que ay de dos casas que tenia fabricadas dho. Padilla, proximas al lindero que tenia en la referida donacion; y por el poniente con el lindero que la escritura resa de todo el sitio que dho. Padilla tiene y como digo: de dhas. tierras le ase gracia y donacion, y traspasa su proprio fuero, domicilio, y senorio el sobre dho. Diego Padilla, con consentimiento de su esposa e hijos, en la persona de el susodho. Dn. Diego Borrego, sin mas yntereza que su yntima voluntad, para que las gose por si, sus hijos y erederos, aora y siempre, sobre que es dha. donacion pura, mera, perfecta, e ynrebocable, que el derecho llama yntervibos, y en que renuncia su proprio fuero, domicilio y besindad y las leyes de la numerata pecunia, prueba, y paga; y que se las da libres de todo senso, tributo, y otra yptoteca para que pueda benderlas, cambiarlas, y enagenarlas, á la persona que fuera su voluntad, y que renuncia todas las leyes que á su fabor puedan ablar, con la mayor de el derecho; sobre que no se le pondrá pleyto ni demanda, en ningun tiempo, por si, sus hijos erederos y susesores, y que si á caso se lo pusieren que no sean oydos en juycio ni fuera de el, y que da poder bastante á las justicias de Su Magd. de qualesquiera parte, para que con todo rigor le compelan y apremien al cumplimiento de esta donacion, como si fuera por sentencia difinitua de Jues Competente, pasada en cosa juzgada; y al cumplimiento y saneamiento obliga su persona y bienes muebles, rayses, abidos y por aber, y renuncia todo quanto

34 á su fabor pueda alegar, y la ley si cumuenirit e jurisdictionen. Asi lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó connigo y dos testigos de mi asistencia, á falta de escribano publico y real que no lo ay en este reyno.

JU. GONSALEZ BAS. [RUBRIC.]  
DIEGO PADILLA. [RUBRIC.]

Ttò.: ANTTO. MONTOYA. [RUBRIC.]  
Tto.: YSIDRO SANCHEZ. [RUBRIC.]

35

*Instrument of donation.*

[RUBRIC.]

In this villa of San Felipe de Albuquerque, on the seventh day of January of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzalez Bas, alcalde, mayor and war captain of the said town and its jurisdiction, personally appeared Diego Padilla, whom I certify I know, who, in the presence of two witnesses, said that he gave and did give freely to Don Diego Borrego, to wit, a piece of land which, as will hereinafter more fully appear, he had and possesses by donation, which, in favor of the said Padilla, was made by Captain Antonio Gutierrez, and its boundaries are: On the north, lands of Joaquin Sedillo; on the east, the Rio Grande; on the south, land of the said Diego Padilla, there serving as a landmark on the said boundary, the midway line between the two houses which the said Padilla built near the boundary line on the said donation, and on the west with the boundary line called for in the title papers of the whole tract which the said Padilla has; and as I say of the said lands, he makes gift and donation and conveys his own right, donicil, and seign'ory, the said Diego Padilla, with the consent of his wife and children, to the said Don Diego Borrego, without



any consideration other than his own will, in order that he may enjoy them for himself, his children, and heirs now and forever, and the said donation is pure, mere, perfect, and irrevocable, which the law calls inter vivos, and in which he renounces his own right, domicile, and residence and the laws of non numerata pecunia proof and payment, and he gives them to him free of all tax, tribute, or other burthen, in order that he may sell them, exchange them, and alienate them to any person he may please, and that he renounces all the laws which may lie in his favor, together with the general law of right; and against him no suit nor demand shall ever be brought, either by himself or by his children,

36 heirs, and successors, and in case they should bring any, let them not be heard either in court or out of it; and that he gives sufficient power to the justices of His Majesty of any place to compel and oblige him with all rigor to the fulfillment of this donation as if it were by definitive decision of a competent judge given in a matter adjudged; and to the fulfillment and warranty he binds his person and the property, movable and real, which he now has and that which he may hereafter have; and he renounces all that which in his favor he might allege, and the law *si cum veni rit* and *jur'sdic'ionem*. Thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this Kingdom.

JU. GONSALES BAS. [RUBRIC.]  
DIEGO PADILLA. [RUBRIC.]

Witness :

ANTO. MONTOYA. [RUBRIC.]

Witness :

YSIDRO SANCHEZ. [RUBRIC.]

37 *Carta de escritura de Venta Real á favor de Dn. Diego Borrego.*

[RUBRIC.]

En esta villa de San Phe. de Alburquerque, en onse dias de el mes de enero de el año de mil setesientos y treynta y quatro años, ante mí el Capp. Ju. Gonsales Bas, alcalde mayor y capp. á guerra de dha. villa y su jurisdiccion, compareció Antto. Sedillo, hijo legitimo de Joaquin Sedillo y eredere forzoso de el dho., quien dijo: que daua y dió en benta real un sitio que está en el rio abajo, y abajo de el pueblo de la Ysleta, el qual sitio es para agostar ganados mayores y menores, con mas tierras labradas y eriasas para poder laborear, y como digo da, y dió el dho. Antto. Sedillo en benta real el referido sitio con pareser y consentimiento de su madre y de otros ermanos quienes le ampearon facultad para ello, por aber muerto adeudado dho. Joachin y para remunerar la cantidad que deuia; y confiesa dho. Antonio Sedillo que dho. sitio lo ubo su padre, por merced, en nombre de su magd., parte y parte que ubo y poseya en benta real como consta por los cinco ystrumentos que entregó; y de el dho. sitio corren los linderos por el norte con el lindero de la legua del dho. Pueblo de la Ysleta; por el oriente con el rio de el Norte; por el sur con un alamo *coate* que llaman algunos alamo de la culebra; y por el poniente con la sera de el rio Puerco; y dise: que dho. sitio se lo da á Dn. Diego Borrego, por el precio y quantia de

dos sientos pesos, en reales, los que confiesa dho. Antto. Sedillo aber reseuido á su contento y satisfacion, de que se da por contento, pagado y satisfecho, y que si mas bale, ó baler pueda, le ase gracia y donacion pura, mera, perfecta, yrebocable, que el derecho llama ynterbiuos; sobre que renuncia su propio fuero, domicilio y vesindad, y las leyes de la numerata pecunia, prueba, y paga, y la de mancomunidad que abla sobre la mitad de el justo precio; y que se las da libres de todo senso, tributo, y otra ypoteca, para que las pueda bender, cambiar y enagenar como sullos que son, á la persona que fuere su boluntad; y que renuncia todas las leyes que puedan ablar a su fabor, y que sobre ello no le pondrá pleyto ni demanda en ningun tiempo por si, sus hijos eroderos

38 y susesores, y que si acase se lo pusieren, que no sean oydos en en juycio ni fuera del, y q. da poder bastante á las justicias de su magestad, de qualesquiera parte que sea, para que con todo rigor le compelan y apremien al cumplimiento de esta escritura, como si fuera por sentencia difinitiva de Jues Competente, pasada en cosa juzgada; y al sancamiento de esta escritura obliga su persona, y biens rayses, y muebles abidos y por aber, sobre que renuncia todo quanto á su fabor pueda alegar y la ley si conuenir e jurisdisionen; así lo otorgó ante mi dho. alcalde mayor, de que doy fee; y lo firmó conmigo y dos testigos de mi asistencia, á falta de escribano publico y real, que no lo ay en este reyno.

ANTTO. SEDILLO. [RUBRICA.]  
 JU. GONZALES BAS. [RUBRICA.]

Tto. YSIDRO SANCHEZ. [RUBRICA.]  
 Tto. SALVADOR MARTINEZ. [RUBRICA.]

39 *Instrument of real sale of agricultural land to Don Diego Borrego.*

In this villa of San Felipe de Albuquerque, on the eleventh day of the month of January of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, personally appeared before me Antonio Sedillo, legitimate son of Joaquin Sedillo, and forced heir of the aforesaid, who said that he gave and did give in real sale a tract of land down the river and below the pueblo of Isleta, which tract is for the pasturage of large and small stock, with some broken lands and some cultivable and unbroken; and as I say, the said Antonio Sedillo gives and did give in real sale the said tract, after consultation and with the consent of his mother and his brothers and sisters, who gave him authority for the same because the said Joaquin died in debt, and in order to procure the amount which he owed; and the said Antonio Sedillo acknowledges that the said tract was acquired by his said father in part by grant in the name of His Majesty and in part acquired and held under real sale, as shown by five instruments which he delivered; and the boundaries of the said tract are: On the north the line of the league of the Isleta pueblo; on the east the Rio Grande; on the south a twin alamo called by some the Culebra, and on the west the ridge of the Puerco River; and he says that the said tract he gives to Don Diego Barrego for the price and sum of two hundred dollars in money, which the said

40 Antonio Sedillo to have received to his content and satisfaction, and he says he is contented, satisfied, and paid, and that if it is



worth more or may be worth more he makes him gift and donation of it pure, mere, perfect, and irrevocable, which the law calls inter vivos, in which he renounces his own right, domicile, and residence, and the laws non numerata pecunia, proof and payment, and that of things held in common which treats of the one-half of the just price, and that he gives them to him free from all tax, tribute, or other burthen in order that he may sell, exchange, and alienate them as his own, which they are, to whomsoever he pleases; and that he renounces all the laws which may be in his favor; and that no suit nor demand shall ever be brought against him either by himself, his children, heirs, or successors, and in case any shall be brought let them not be heard either in court or out of it; and he gives full power to the justices as His Majesty of whatsoever place, that they may with all rigor of law compel and require the fulfillment of this instrument as if it were by definitive decision of a competent judge passed upon a thing adjudged; and to the warranty of this title he pledges his person and property, real and personal, present and to come; in which he renounces all that may be alleged in his favor, and the law *sciunvenirit ejurisdicicionen*; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this kingdom.

ANTTO. SEDILLO. [RUBRIC.]  
 JU. GONZALES BAS. [RUBRIC.]

Witness:

SALVADOR MARTINES. [RUBRIC.]  
 ISIDRO SANCHEZ. [RUBRIC.]

41

# PLAINTIFF'S EXHIBIT C.

[From Archive 371.]

Autos y ymbentario, divicion y particion de bienes que quedaron por fallecimiento de Dn. Clemente Gutierrez entre su muger y cinco hijos, concluidos en el año de 1785.

## *Auto y principio de ymbentario.*

En la Hacienda de San Ysidro del Pajarito, en treze dias del mes de mayo de mil setecientos ochenta y cinco años, Yo, el mencionado anterior Govor., pasé á la casa y morada de Da. Maria Apolonia Baca, y estando presente, le leí y notifiqué el auto consecutivo á su peticion, sobre lo qe. le recibí juramento conforme á dro. para que manifestase todos los bienes raizes, muebles, derechos y acciones que poseia su difunto marido, Dn. Clemente Gutierrez, sin encubrir ni disimular ningunos; de lo que entendida, dixo: que está prompta á poner de manifesto los que consten y de que tenga noticia, que verificó invocando á Dios en la forma siguiente:

Pessos de Pta. Pessos de la Tierra.

Primeramente, el sitio de Sn. Ysidro del Pajarito, que consta con sus linderos de su respectiva escritura No. 1, e importa ..... 1, 200, 0  
 Yd., la cassa y morada qe. fue del difunto Dn. Clemente Gutierrez, constante de diez y ocho piezas, en qe. se incluyan la capilla y sacristia de la hada., excluyéndose de abaluo cinco piezas pertenecientes á Dn. José Mariano de la Pena, e igual no. de Dn. Franco. Garcia, estimados las diez y seis primeras en ..... , 500, 0  
 Yd., un solar en el mismo sitio que corresponde á una cassa qe. vendió .....  
 Passa á la Bta. .... 1, 700, 0

	Pesos de Pta.	Pesos de la Tierra.
Por la Buelta .....		1, 700, 0
Dn. Diego Antonio Baca como consta del recibo No. 2, abalado dho. solar..		, 010, 0
Yd., un rancho en la birtientes de Navaho, cuyas aguas, tierras, pastos y linderos constan en sus respectivas quatro escrituras No. 3, pasadas por su abaluo, que es de.....		5, 600, 0
Yd., un rancho abaxo de los linderos del Pueblo de la Yaleta llamados, e comunmte. Sn. Clemente, Barrancos y los Pinos, de que se está en posesion aunque no hay documto. de sus linderos, estimado en .....		1, 200, 0
Ydn., una aucion de tierras en el bosque de José Sanchez en .....		

43

[From Archive 371.]

Proceedings and inventory, division and partition of the property which was left at the death of Don Clemente Gutierrez among his wife and five children, concluded in the year 1785.

*Order and beginning of the inventory.*

At the estate of San Ysidro del Pajarito, on the thirteenth day of the month of May of the year one thousand seven hundred and eighty-five, I, the said governor, proceeded to the house and dwelling of Dona Maria Apolonia Baca, and, she being present, I read and notified to her the order following her petition and administered to her the legal oath in order that she might make a statement of all the property, real, personal, rights and shares possessed by her defunct husband, Don Clemente Gutierrez, without concealing or withholding any of the same, and she having understood, said that she was ready to make a statement of that existing and of that of which she has information, which she verified, swearing by God, in the form following:

	Hard dollars.	Current dollars.
First. The tract of San Isidro del Pajarito, which is shown with its boundaries in its respective deed No. 1, and it is worth .....		1, 200, 0
Idem. The house and dwelling which belonged to the defunct Don Clemente Gutierrez, containing eighteen rooms, among which are included the		
44 chapel and the sacristy of the estate, excluding from the valuation five rooms belonging to Don Jose Mariano de la Pena and an equal number belonging to Don Franco Garcia, the first sixteen estimated a t...		, 500, 0
Idem. A house lot on the side tract corresponding to a house which was sold.		
To be carried forward .....		1, 700, 0

	Hard dollars.	Current dollars.
Brought forward .....		1, 700, 0
By Don Diego Antonio Baca, as appears by receipt No. 2, the said house lot valued at .....		, 010, 0
Idem. A ranch at the Virtientes de Navajo, the lands, waters, pastures, and boundaries of which are shown by its four deeds No. 3, respectively, valued at .....		5, 600, 0
Idem. A ranch below the boundary of the pueblo of Isleta, commonly called San Clemente, Barrancos, and Los Pinos, of which they have possession, although there is no title deed of its boundaries, estimated at .....		1, 200, 0
Idem. A share in lands of the bosque of Jose Sanchez, at .....		

45

[From Archive 371.]

Se le ha señalado á Da. Maria Apolonia Baca, etc.

	Pesos de Pta.	Pesos de la Tierra.
Se le adjudica la mitad del sitio de Sn. Ysidro de Pajarito por su respectivo Abaluo .....		, 600, 0
La mitad de la casa de su morada en .....		, 250, 0
La mitad de vn solar en el mismo sitio en .....		, 005, 0
La mitad del Rancho de Navajo .....		2, 800, 0

	Pessos de Pta.	Pessos de la Tierra.
La mitad del Rancho de Sn. Clemente en.....		, 600, 0
Ydn. La mitad de las tierras de bosque de José Sanchez, que no tiene tasacion.....		

16 [From Archive 371.]

There has been assigned to Dona Maria Apolonia Baca, etc.

	Hard dollars.	Current dollars.
There is adjudged to her one-half of the tract of San Isidro de Pajarito according to its respective valuation.....		, 600. 0
One-half of her dwelling house.....		, 250. 0
One-half of a house lot on the said tract.....		, 005. 0
One-half of the Rancho de Navajo.....		2, 800. 0
One-half of the Rancho of San Clemente.....		, 600. 0
Idem. One-half of the lands of the bosque de José Sanchez, which is not valued.....		

17 [From Archive 371.]

*Hijuela de Dn. Lorenzo Gutierrez.*

Hijuela de Dn. Lorenzo Gutierrez á quien como á hijo y heredero de su difunto padre Dn. Clemente Gutierrez en la mitad de los bienes raizes, muebles y dependencias que se contienen en el ynventario le tocan y pertenecen, etc.

Pessos de Pta. R. G. Pessos de la Ta. R. G.

Se le adjudican la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito.....	, 120, 0, 0
La quinta parte de la mitad de vn solar en el mismo sitio.....	, 001, 0, 0
La quinta parte de la mitad del Rancho de Navajo en.....	, 560, 0, 0
La quinta parte de la mitad del Rancho de San Clemente en.....	, 120, 0, 0
La quinta parte de la mitad de las tierras del bosque de José Sanchez.....	

48 [From Archive 371.]

*Schedule of Don Lorenzo Gutierrez.*

Schedule of Don Lorenzo Gutierrez, to whom as a son and heir of his defunct father, Don Clemente Gutierrez, of the one-half of the property, real and personal, and debts due the estate contained in the inventory there belongs and pertains, etc., etc.

There is adjudged to him the fifth part of the one-half of the tract of San Isidro de Pajarito.....	, 120. 0. 0
The fifth part of one-half of the value of a house lot in the said tract.....	, 001. 0. 0
The fifth part of the one-half of the Rancho de Navajo.....	, 560. 0. 0
The fifth part of one-half of the Rancho de San Clemente.....	, 120. 0. 0
The fifth part of one-half of the lands of the bosque de José Sanchez.....	

49 [From Archive 371.]

Hijuela de Da. Lorenzo Gutierrez, muger legitima de Dn. Franco. Anto. Garzia, etc.

Pesos de Pta. R. G. Pesos de la Ta. R. G.

Se le adjudica la quinta parte en la mitad del sitio de Sn. Ysidro de Pajarito. 120, 0, 0  
 La quinta parte de la mitad del Rancho de Sn. Clemente en ..... 120, 0, 0  
 La quinta parte de la mitad de las tierras del bosque de José Sanchez. .... \*

50

[From Archive 371.]

Schedule of Dona Lorenzo Gutierrez, legal wife of Don Francisco Antonio Garzia, etc., etc.

Hard dollars R. G. Current dollars R. G.

There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito. .... 120, 0, 0  
 The fifth part of the one-half of a house lot in the side tract ..... 001, 0, 0  
 The fifth part of the one-half of the Rancho de Navajo ..... 560, 0, 0  
 The fifth part of the one-half of the Rancho of San Clemente ..... 120, 0, 0  
 The fifth part of the one-half of the lands of the bosque of José Sanchez. .... \*

51

[From Archive 371.]

Hijuela de Da. Maria Manuela de la Soledad Gutierrez, muger legitima de Dn. José Mariano de la Pena, etc.

Pesos de Pta. R. G. Pesos de la Ta. R. G.

Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito ..... 130, 0, 0  
 La quinta parte de la mitad de un solar en el mismo sitio en ..... 001, 0, 0  
 La quinta parte de la mitad del Rancho del Navajo en ..... 560, 0, 0  
 La quinta parte de la mitad del Rancho de Sn. Clemente ..... 120, 0, 0  
 La quinta parte de la mitad de las tierras del bosque de José Sanchez. .... \*

52

[From Archive 371.]

Schedule of Dona Maria Manuela de la Soledad Gutierrez, legal wife of Don Mariano de la Pena, etc., etc.

Hard dollars R. G. Current dollars R. G.

There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito. .... 120, 0, 0  
 The fifth part of the one-half of a house lot in the said tract ..... 001, 0, 0  
 The fifth part of the one-half of the Rancho de Navajo ..... 560, 0, 0  
 The fifth part of the one-half of the rancho de San Clemente ..... 120, 0, 0  
 The fifth part of the one-half of the lands of the bosque de José Sanchez. .... \*

53

[From Archive 371.]

Hijuela de Da. Maria Luisa Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

Pesos de Pta. R. G. Pesos de Ta. R. G.

Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito ..... 120, 0, 0  
 La quarta parte de la casa morada del difunto en su corresp.te. abaluo ... 125, 0, 0  
 La quinta parte de la mitad de un solar en el mismo sitio de Pajarito ..... 120, 0, 0  
 La quinta parte de la mitad del Rancho de Navajo ..... 560, 0, 0  
 La quinta parte de la mitad del Rancho de Sn. Clemente ..... 120, 0, 0  
 La quinta parte de la mitad de las tierras del bosque de José Sanchez. .... \*

54

[From Archive 371.]

Schedule of Dona Maria Luisa Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars R. G.	Current dollars R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....		120.0.0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....		125.0.0
The fifth part of the one-half of a house lot in the said tract of Pajarito.....		001.0.0
The fifth part of the one-half of the Rancho de Navajo.....		560.0.0
The fifth part of the one-half of the Rancho of San Clemente.....		120.0.0
The fifth part of the one-half of the lands of the bosque de Jose Sanchez..		

55

[From Archive 371.]

Hijuela de Da. Juana Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

	Pesos de Pta. R. G.	Pesos de la Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito en.....		120.0.0
La quarta parte de la casa Morada del difunto en su correspte. Abaluo.....		125.0.0
La quinta parte de la mitad de un solar en el mismo sitio de Pajarito.....		001.0.0
La quinta parte de la mitad del Rancho de Navajo en.....		560.0.0
La quinta parte de la mitad del Rancho de Sn. Clemente en.....		120.0.0
La quinta parte de la mitad del Rancho o bosque de José Sanchez.....		

56

[From Archives 371.]

Schedule of Doña Juana Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars R. G.	Current dollars R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....		120.0.0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....		125.0.0
The fifth part of the one-half of a house lot in the said tract of Pajarito.....		001.0.0
The fifth part of the one-half of the Rancho de Navajo.....		560.0.0
The fifth part of the one-half of the Rancho of San Clemente.....		120.0.0
The fifth part of the one-half of the lands of the bosque de José Sanchez..		

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## PLAINTIFFS' EXHIBIT D.

Equivalent to the third seal, for the year 1818.

(Signed)

FRANCISCO ORTIZ. [RUBRIC.]

In the town of San Felipe Neri de Albuquerque, on the twentieth day of the month of September, one thousand eight hundred and eighteen, before me, Don Josef Mariano de la Pena, senior judge thereof acting by appointment, with attending witnesses, in the absence of all notaries, personally appeared before me Don Francisco Xavier Chavez, resident of the town of Los Padillas, and Don Jose Lorenzo de la Pena, of the town of Pajarito, both within this jurisdiction, Pena stating that by authority and consent of his sister, Dona Mariana, and his brother Jose Rafael de la Pena, having acquired by the division between five brothers from their

grandmother and mother, Dona Maria Martina de la Soledad Gutierrez, a piece of land in the grove called Los Pinas, he gives, and in effect did give, in legal sale, now and forever, unto the said Mr. Chavez and his heirs, the aforesaid piece of land, without stating the number of varas, not being as yet divided (or) measured, but being the succession of brothers, in which division he is in the second (degree) on whichever side said premises may be measured, which premises are bounded on the north by land of the Pueblo of Isleta, on the south by lands known as those of Los Lentes, on the east by the hills, and on the west by the river del Norte, which inheritance he sold, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), free from all obligation and encumbrances whatever, in the price and sum of one hundred and fifty dollars, in sealed money of the Royal Mint, to his entire satisfaction, for which he renounces the exception of the nan numerata (not ready money), its proof and payment of the receipt, and the others which refer to them, at any time; that the said one hundred and fifty dollars are the legitimate value in which he sold said land, which he considers to be its just value, and not worth more, and if it should be worth more, he grants and donates the same to the purchaser unconditionally, completely, perfectly, and irrevocably, which is termed in law intervivas (during life and irrevocable), with the exhibition and renunciation of the laws relating to fraud and those of the royal ordinance, with all others made in the court of Alcala de Enareo; from now he abandons and (quits) claims his brother heirs from all the right and interest held by him the said land, transferring the same to the purchaser and his heirs that he may use the same as legally his acquired by a just title, which is this conveyance; and for the security and guaranty of this sale, the conveyer bound his person and property possessed, or which he may hereafter possess, with authority and submission to the royal justices of His Majesty, to compel and press him to its fulfillment with all the rigor of the law, as by execution in the case of judgment rendered in a case tried, consented to, and not appealed; he renounced his proper residence and vicinity, the law of cit combenerit and the general one in law. In witness whereof he has so executed (this conveyance), signing the same with me, the said senior justice, and those in my attendance, on the aforesaid day, with the further provision that if suit is instituted against him on account of said sale, he will defend the same until Chavez is left in peaceful and quiet possession, and when can do no more, he will return the same amount, and will further pay him the improvements he may have made; to all which I certify.

(Signed) JOSE MARIANO DE LA PENA. [RUBRIC.]

*For himself and for his sister Dona Mariana  
and his brother Jose Rafael.*

(Signed) JOSE LORENZO DE LA PENA. [RUBRIC.]

Attending witness:

SANTIAGO DE LA CRUZ BERTIA. [RUBRIC.]

Attending witness:

(Signed) AMVROSIO ARMIJO. [RUBRIC.]

(Endorsed:) Surveyor-general's office, translator's department, Santa Fe, N. M., June 11, 1855. I certify the foregoing to be a translation of document D, in claim No. 3, to the Bosque de los Pinos. Davis V. Whiting, translator.

## PLAINTIFF'S EXHIBIT E.

In the jurisdiction of San Augustin de la Isleta, on the 19th day of the month of October, one thousand eight hundred and twenty-one, before me, Don Manuel Ruvi, justice (alcalde) of the same, and before the secretary of the same in its corporation, personally appeared the urban captain of cavalry, Don Francisco Xavier Chavez, and Don Francisco Sarracino, representing the person of his mother, Dona Maria Luisa Gutierrez, in the name of and representing said lady, residence of this jurisdiction, the first of the town of Los Padillas and the second of Pajarito, Sarracino stating that having acquired by inheritance in the division between fial brothers, as heirs of the deceased Don Clemente Gutierrez and Dona Apolonia Baca, the fifth part of the farm (rancho) of the grove known by the name of Los Pinas, within the boundaries and within its proper place, on the north side by the league of Pueblo of Isleta, on the south residents of Valencia, on the east the plain, and on the west the river Del Norte, which he gave, and in effect did give by legal sale from now and forever unto said Mr. Chavez and his heirs in the price and sum of one hundred and fifty dollars in money to his satisfaction, free from all obligation or encumbrance whatsoever, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), by which he renounces the exception of the non numerata (not ready money), its proof and payment of the receipt; that the aforesaid one hundred and fifty dollars are the legitimate value in which he sold said inheritance, which he considers to be its just value, and not worth more; and if it should be worth anything more, the remainder he grants and donates to the purchaser unconditionally, complete, perfect, and irrevocably, which is termed in law intervivos (during life and irrevocable), with the exhibition and renunciation of the laws relating to frauds, and tho'e of royal ordinances, with all others made in the court of Alcala de Enares; and from now said lady and heir heirs abandon all right and interest they have to said inheritance, transferring the same to the purchaser and his heirs, that he may use the same as legally his, acquired by a just title, which is this conveyance; and for the security and guaranty of this sale the conveyer bound the person and property possessed by said lady, with authority and submission to the royal justices of His Majesty for its fulfillment; and as her representative, to compel and press him with all the rigor of the law, as by execution in the case of a judgment rendered in a case tried, consented to, and not appealed, he renounces his own residence and vicinity the law of eit combererit and the general one in law. In witness whereof he has executed this (conveyance), signing the same with me, the aforesaid justice (alcalde), and on the present paper, for the want of stamped, the party interested binding himself to attach (thereto) a sheet of the proper seal. All before the secretary. To which I certify.

(Signed)

MANUEL RUVI DE CELIS. [RUBRIC.]

By direction of madam, my mother, Dona Maria Lu Luisa Gutierrez,

(Signed)

FRANCISCO SARRACINO. [RUBRIC.]

(Signed)

JOSE MARIANO DE LA PINA, [RUBRIC.]

Secretary.



SURVEYOR-GENERAL' OFFICE,  
TRANSLATOR'S DEPARTMENT,  
*Santa Fe, New Mexico, July 14, 1855.*

I certify the foregoing to be a translation of Document E, in Claim No. 3, to the Bosque de los Pinos.

DAVID V. WHITING, *Translator.*

59

PLAINTIFF'S EXHIBIT F.

The citizen, Jose Antonio Chavez, constitutional justice (alcalde) of Isleta, ex political chief of this Territory, &c., &c.

In the town of San Andres de los Padillas on the 27th of December, 1839, before me, the aforesaid constitutional justice (alcalde) of Isleta, and those in my attendance, personally appeared Messrs. Don Juan Nepomoceno Gutierrez and Dona Apolonia Gutierrez, as agent for Dona Maria Alvarez del Castillo, and the first parties stated that their father, Don Lorenzo Gutierrez, had sold to Don Francisco Xavier Chavez, deceased, the portion to which they were entitled to in the grove called "de Los Pinos," as well as the portion to which Dona Lorenzo Gutierrez was entitled to; that said portions were delivered to said Don Francisco by their father aforesaid, and that the said Don Francisco remained in the quiet, peaceable possession of the property during the lifetime of their father without having any claim set up against him, and that they do not know if any document was executed in his favor, and as the said document does not appear, they give him the present certificate in order that no claim may be set up against his possession by their children, heirs, or successors, and at the request of Don Mariano Chavez they give this certificate, which they sign with me and my attending witnesses on this paper, there being none of the proper seal, on the day, month, and year aforesaid, *yo* which I certify.

(Signed)

JOSE ANTONIO CHAVEZ. [RUBRIC.]

(Signed)

JUAN

NEP'O GUTIERREZ. [RUBRIC.]

Attending :

(Signed)

IGNACIO ORTIZ. [RUBRIC.]

*(For my mother, Dona Palonia Gutierrez.)*

Attending :

(Signed)

JUAN OTERO. [RUBRIC.]

(Signed)

JUAQUIN BAYAR. [RUBRIC.]

SURVEYOR-GENERAL'S OFFICE,  
TRANSLATOR'S DEPARTMENT,  
*Santa Fe, N. M., June 11th, 1855.*

I certify the within to be a translation of Document K, in Claim No. 3, to the "Bosque de los Pinos."

DAVID V. WHITING, *Translator.*

60

PLAINTIFF'S EXHIBIT G.

Dn. Lorenzo Gutierrez, capitan de milicias, comandante en campaña, alcalde, de segunda eleccion de la Biya de Alvirquerque su juridicion y frontera, &c.



Por quanto se me han presentado los yjos principales del pueblo de Sn. Agustin de la Ysleta en sollicitu de documento de escritura sobre las tierras que del lindero de dicho pueblo al de los Lentos de sur á norte se le vendieron á dicho pueblo por mi hantesesor Dn. Mariano de la Peña de la casa de mi manexo de Sra. mi Madre Dña. Josefa Polonia Baca de culla venta para la costancia en poder del alcalde de primera elegcion desta dicha jurisdiccion Dn. Manl. de Artega el que por hayarse de grave enfermeda no se le puede esixir el espresado documento hasta su mexoria o fallesimiento y que siendo regular lo tenga depositado en el archivo que ha su cargo esta para escusar las rrepetidas y stancias de los espresados yjos y costandome ser sierta la compra les doi el presente que firmo para rresguardo firmandolo pa la devida costancia con dos de mi hasistancia en este de pajarito á tres dias del mes de Mayo de mil ochosientos ocho años.

LORENZO GUTIERREZ. [RÚBRICA.]

Asa.: AGUSTIN DE LA PEÑA. [RÚBRICA.]

Asa.: MANL. RUVI. [RÚBRICA.]

61

PLAINTIFF'S EXHIBIT G.

[Translation.]

Don Lorenzo Gutierrez, captain of militia, commandant in the field, alcalde of second election of the town of Albuquerque, its jurisdiction and frontier, etc., etc.

Whereas the principal men of the pueblo of San Agustin de la Isleta have come before me asking for a deed of conveyance for the lands which, from the boundary of the said pueblo to that of Los Lentos, from south to north, were sold to the said pueblo by my predecessor, Don Mariano de la Peña, from the estate of my mother, Doña Josefa Polonia Baca, of which I am the administrator, of which sale the documentary evidence is in the possession of the alcalde of first election of this said jurisdiction, Don Manuel de Artega, from whom, he being seriously ill, it cannot be obtained until he gets better or dies, and it being probable that it is deposited in the archives under his charge, in order to avoid the repeated petitions of the said men, and knowing that the purchase was really made, I give them the present, which I sign for their security, signing it in order that it may so duly appear, with two assisting witnesses, in this place of Parjarito, on the third day of the month of May of the year one thousand eight hundred and eight.

LORENZO GUTIERRES. [RUBRIC.]

Assisting witness:

AGUSTIN DE LA PEÑA. [RUBRIC.]

Assisting witness:

MANL. RUVI. [RUBRIC.]

62

PLAINTIFF'S EXHIBIT H.

YSLETA, y Junio de 1826.

Sr. Gr. Dn. ANTO. NARVONA,

Sor., en virtud de havérseme presentado los hombres mayores y principales deste Pueblo de Sr. S. Agustin de la Ysleta, sobre qe. Dn. Anto.

José Padilla está fabricando, en un sitio de tierra qu. el Pueblo compró, á la casa de Dn. Clemente Gutierrez, como consta por un documento qe. halla en ntro. poder, otorgado por Dn. Lorenzo Gutierrez, dha. venta fue echa por Dn. Mariano de la Peña; en dha. compra no hubo mas comprendidos qe. alludaron con su dinero, qe. fueron Blas Lente, Nicolas Olgin, y Pedro Lente; este dho. Anto. José Padilla no contribulló con nada, solo se funda acredor porque para completar la cantidad del dinero qe. teniamos de entregar por dha. tierra, vendimos en la otra vanda tambien comprada á unos Señores Padilla, como consta por la escritura qe. para en ntro. poder, y disen los viejos deste Pueblo qe. es sierto qe. en esta compra contribulló con un tanto, Roque Lusero, abuelo de la muger de dho. Anto. José Padilla, y qe. no se le niega qe. sea acredor á dho. sitio, pero qe. en donde le toque como convidado, y qe. si en esta tierra desta vanda, presenta algun documento qe. diga qe. alludó con algo, tambien se le dará como se le dió á Blas Lente, á Nicolas Olgin, y á Pedro Lente, pero qe. adonde el se a puesto, qu. es casi al medio de la tierra, de ningun modo se puede, pues dha. tierra se compró para abrebaeros de ntros. animales, y regularmente hai bajan bacas, buelles, y cavallada á abrebar, y presisamente an de dañar, de donde vienen las riñas y caestiones, y para evitar esto no queremos qe. se nos ponga ay, pues si se considera acredor por haver vendido en donde el tiene ausion por parte de su muger, qe. aun quedó mucha tierra del sitio de la otra banda de donde darle lo qe. le corresponda, pues no se le niega el derecho.

En virtud de todo lo expuesto, pasamos á la fuente de la prudencia de V. S. con la venia de notro. ale. constitucional, y rendidamente suplicamos se sirva darnos el consuelo de atendernos, segun llevamos dicho, con lo que V. S. juzge ser de justicia con lo que rresviviremos mersed, y juremos no ser de malisia esta ntra. petision, si lo nesecario &.

MANUEL LUSERO [A CROSS.]

*Ale. de Barrio.*

63

#### PLAINTIFF'S EXHIBIT H.

[Translation.]

ISLETA, June 14, 1826.

To the Governor Don ANTONIO NARBOXA,

SIR: The principal men of this pueblo of San Augustine of Isleta have come before me to say that Don Antonio José Padilla is building on a tract of land which the pueblo purchased from the house of Don Clemente Gutierrez, as will appear from a document which is in our possession executed by Don Lorenzo Gutierrez, the said sale having been made by Don Mariano de la Peña, in which purchase there were included only those who aided with their money, and these were Blas Lente, Nicolas Olgin, and Pedro Lente. This said Antonio José Padilla did not contribute anything, and he bases his claim solely on the fact that in order to complete the sum of money which we had to pay for the land we sold on the other side of the river (land) also purchased from certain Messrs. Padilla, a' appears by the title paper which we hold, and the old men of the pueblo say that it is true that for this purchase a certain amount was contributed by Roque Lusero, grandfather of the wife of the said Antonio José Padilla, and it is not denied that he has an interest in the said tract,

but at such a point as it may be proper for him as one invited, and if in the tract on this side he presents any documents that will show that he assisted with anything there will also be given to him as was given to Blas Lente, to Nicolas Olgin and to Padro Lente; but where he has located, which is almost in the middle of the land, can not be allowed by any means, since the said land was purchased for watering places for our animals, and there will pass there cows, oxen, and horses, and they will certainly cause damage, whence will arise quarrels and questions, and to avoid these we do not want him to locate there, and if he thinks that he has an interest because of a sale having been made in the part where he has a share on account of the interest of his wife, there was a great deal left of the tract on the other side from which there may be given him that to which he may be entitled, as his right is not denied.

In virtue of all of that which we have set forth we apply to the fountain of the prudence of your honor with the permission of our constitutional alcalde, and we humbly pray that you will deign to give us the consolation of your attention in accordance with that which we have said, with your honor's decision as to what may be just in the matter in which we will receive grace, and we swear, etc.

MANUEL LUSERO. [A CROSS.]  
*Alcalde of the Ward.*

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## PLAINTIFF'S EXHIBIT I.

Don José Antonio Chaves Duran, the. de las milicias vrbanas y Alce. Mayor del Pueblo de la Ysleta y sus partidos, &c.:

Porquanto se me han presentado los hijos prinsepales del Pueblo de Sor. Sn. Agustin de la Ysleta en solisitud de que se les midiera su sitio del lado del sur la que lindan con Los Lentes, y pasé á dho. sitio y mandé llamar á los prinsepales de Los Lentes, y juntos los hijos del Pueblo de la Ysleta y Los Lentes, y medi dho. sitio y entrego á los del Pueblo lo que justamente era sullo, y á Los Lentes lo mismo, y quedaron vnos y otros mui contentos y conformes con la medida que se hiso y que en nignun tienpo no pondrán alegato ni vnos ni otros por estar echo el reparte fiel y legal, y que si acaso alguno pusiere algun alegato, que no sea hoido en juicio, y mandé pucieran sus mojoneras pa. perpetua memoria y firmé este documento para la devida constancia, con dos testigos de mi asistencia en este Pueblo de la Ysleta, á dos de junio de mil ochosientos beinydos años, y doy fee.

JOSÉ ANTO. CHAVS. DURAN. [RÚBRICA.]

Assaa.:

MANL. YTURRIETA. [A CROSS.]

SSaa.

PEDRO YTURVIETA. [RÚBRICA.]

65

## PLAINTIFF'S EXHIBIT I.

[Translation.]

Don José Antonio Chaves Duran, Lieutenant of Urban Militia and Alcalde Mayor of the Pueblo de la Isleta and its districts, etc., etc.

Whereas the principal men of the Pueblo de San Agustin de la Isleta have come before me asking that I measure for them their tract on the

south side, which lines with Los Lentes, and I proceeded to the said tract, and I ordered the principals of Los Lentes to appear, and the men of the Puebla de la Isleta and of Los Lentes being assembled, I measured the said tract and I deliver' to those of the pueblo that which was justly theirs, and to Los Lentes the same, and both were well contented and satisfied with the measure which had been made; and they shall not at any time, neither the one nor the other, bring any suit, for the reason that the partition was made faithfully and legally, and in case anyone should bring suit let him not be heard in court; and I ordered that they set up their landmarks in perpetual evidence, and I signed this document in order that it might so duly appear, with two assisting witnesses, in this Pueblo de la Isleta, on the second of June, in the year one thousand eight hundred and twenty-two, and I certify.

F. JOSE ANTO. CHAVES DURAN. [RUBRIC.]

Assisting witness:

MANL. YTURRIETA. [A CROSS.]

Assisting witness:

PEDRO YTURVIETA. [RUBRIC.]

66

# PLAINTIFF'S EXHIBIT J.

[Original Title—Papers.]

*Merzd. del sitio de San Clemente, echa á Ana de Sandoval y Manzanares.*

*Sor. Gov. y Capn. Gel.:*

Ana de Sandoval y Manzanares, vecina de este reino de la Nueva Mexico, puesta á las plantas de Vrsa. pareisco en la mas bastante forma de derecho que aylla lugar y á el mio combenga y digo, señor, que, por cuanto el Marques de la Nava de Brasinós, que Dios haya en gloria, gobernador y capitán general que fué deste dho. reino, nos conduxo á el año de noventa y dos para su poblason, en culla atencion, y en nombre del rey mi Señor (Dios le gue/) nos prometió de dar á cada uno de los becinos naturales deste dicho reino, que entraron á la poblason y pasificacion del, de darnos los sitios que de tierras y de labores y criansas de ganados y caballadas que dejamos perdidas el año de ochenta por su inconita sublemacion, en culla virtud de habernos restituido á dicho reino, experimentando en él innumerables trabajos, y realmente allarme pobre y viuda de Blas de la Candelaria, que Dios aya lla, y cargada de hijos, motivo digno de suplicar á Vsia. se sirba de darme, en nombre de su Magestad (Dios le gue.) un sitio de tierras titulado San Clemente, el cual hube de erencia de mi padre, que Dios aylla, Mateo de Sandoval y Manzanares, que me dexó la merced de dho. rancho con linderos que son los siguientes: Por la parte del norte las tierras de Cristobal de Tapia, y por la parte del sur, con tierras y paderes de la casa de Tome Domingues; por la parte del oriente con el rio del Norte, por la del poniente el rio Puercos, lo cual á Veia. pido y suplico con el mas profundo rendimiento se ha de servir de mandar á la persona que mas fuere de su agrado me de posesion real de dho. sitio, con la nueva merced del para poder yo y mis hijos, nietos, erederos y sucesores, usar de dicho sitio, y gosarlo libremente; y juro en devida forma lo nesesario, etcá.

ANA DE SANDOVAL Y MANZANARES.

PRESEN<sup>3</sup>N.

En la villa de Santa Fe, en trese dias del mes de julio del año de mil setecientos y dies y seis, ante mí, el Capn. Don Phelix Martinez, que lo soi vitalicio desta real presidio de la villa de Santa Fee, govr. y capitan, genl. de este reino, y castellano de sus fuersas y precidios, por su Magd., la presento la contenida y por mi vista la hube por presentada en cuanto á lugar en dro. y atendiendo á lo justo de su pedimento y ser segun su relacion dhas.-tierras de su padre y haberlas despoblado por la subleblazion del año de ochenta.

## AUTO.

Le concedo la merced que pide en nombre de su Magd. por la susodicha., sus hijos, herederos y subseores, para que la gose y posee.  
 67 Entendiéndose sin perjuicio de tercero que mejor dro. tenga, y ha de poblarle dentro de seis meses por atender á la mucha ocupacion del tiempo, y mando al Cpn. Antonio Gutierrez le dé la real posesion en nombre de Su Magd., con todas las seremonias de dro., y este auto le sirva de bastante titulo; y luego que dé dha. posesion que se debuelva este original á este archivo para que se saque testimonio; y para que conste lo firmé con mi secretario de gobn. y guerra en dicho dia ut supra.

PHELIX MARTINEZ.

Ante mí,

MIGUEL THEXORIO DE ALVA,  
*Serio. de Gorn. y Guerra.*

En esta villa de San Felipe de Alburquerque, en beinte y tres dias del mes de julio de mil setecientos y dies y seis dias, io, el Capn. Antonio Gutierrez, alcalde maior y capitan á guerra de la dicha billa y su jurisdiccion, en cumplimiento del auto arriba probeido por el señor gor. y capitan general Dn. Felix Martinez, fuí al dho. sitio y tierras que dho. auto me manda, y en él, dí la real posesion en nombre de su Magd., Dios le ge., á Felix de la Candelaria, en cabeza de su madre Ana de Manzanares y Sandoval, en forma de derecho, con las seremonias acostumbradas que el derecho dispone, pasíandolo de la mano, quien arancó sacate, tiró piedras y gritó, y se la dí por los mismos linderos que señala en su peticion, como así mismo corren sus linderos: Por el oriente con el rio del Norte, por el poniente con el rio Puerco, por el sur con la casa de Tome Domingues, por el norte con una ruina que está poco mas arriba del po. de San Clemente; i en los dichos linderos mandé poner mojoneras, habiéndolos primero reconocido; y lo firmé con dos testigos de mi asistencia, y para  
 68 que así conste lo firmé yo, dho. alcalde maior, capitan á guerra, con dos testigos de mi asistencia en dicho dia, mes y año, ut supra.

Ante mí como juez receptor.

ANTONIO GUTIERRES.

Testigo de asistencia:

ANTON. DE CHABES.

Testigo de asistencia:

BALTAZAR ROMERO.

[Translation of title papers.]

*Grant of the tract of San Clemente made to Ana de Sandoval y Manzanares.**To the governor and captain-general:*

I, Ana de Sandoval y Manzanares, a resident of this Province of New Mexico, placed at the feet of your excellency, appear in due legal form and state, sir, that when the Marquis de la Navade Brasinas, whom may God have in glory, who was governor and captain-general of the said province, brought us hither in the year ninety-two for this settlement, in the view of which, and in the name of my lord, the King, God preserve him, promise to give to each one of the native citizens of this province who might come to settle and pacify the same, the tract of land and fields is and stock raising that we abandoned in the year eighty on account of the powerful insurrection. By virtue of having been restored to said province, suffering thereby a great many hardships, and finding myself really poor and a widow of Blas de la Candelaria, deceased, and burdened with children, a good reason to supplicate your excellency that you grant me, in the name of His Majesty, whom may God preserve, a tract of land called San Clemente, which I inherited from my father, deceased, Mateo de Sandoval y Manzanares, who left me the grant of San Clemente, said rancho, with its boundaries, as follows: On the northern part with the lands of Cristobal de Tapia, and on the southern part with the lands and walls of the house of Tome Domingues, on the eastern part with the Del Norte River, on the part of the west with the Rio Puerco; which I ask of your excellency, and pray with the profoundest respect, that you may send the person whom it may be your pleasure, that the same may place me in the royal possession of said tract, together with the new grant, that I, my children, grandchildren, and heirs, and successors may use and enjoy the same; and I declare in due form whatever may be necessary.

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ANA DE SANDONAL Y MANZANARES.

## PRESENTATION.

In the city of Santa Fe, on the 13th day of the month of July, in the year seventeen hundred and sixteen, before me, Don Phelix Martinez, captain for life of this royal garrison of the city of Santa Fe, governor and captain-general of this province and castellan of its forces and garrison for His Majesty, the petition was presented by the petitioner. I treated the same as before me in due legal form, and in view of the justness of her petition and said lands belonging to her father, according to her petition, and the same having been abandoned by him, an account of the insurrection of the year eighty.

## BEQUEATH.

I concede to her the grant she asks in the name of His Majesty, to the aforesaid, her children, heirs, and successors, that she may enjoy the same; provided that it be without injury to any third party who may have a better right, and she must settle the said grant within six months,



on account of the many occupations of the time, and I hereby command Captain Antonio Gutierrez to place her in royal possession in the name of His Majesty, in all due form legal, and that this decree shall be for her a sufficient title; and as soon as said possession is given her, that this original may be returned to this office that duplicate may be made; and that it may so appear, I have signed with my secretary of government and war on said day as above.

PHILIX MARTINES.

Before me,

MIGUEL TEENORIO DE ALVA,  
*Secretary of Government and War.*

71 In this city of San Felipe de Albuquerque, on the twenty-third day of the month of July, seventeen hundred and sixteen, I, Captain Antonio Gutierrez, chief alcalde and war captain of the said city and its jurisdiction, in compliance to the decree above named by his excellency, the governor and captain-general, Don Phelix Martines, I went to the said tract and land that in said decree I am com'anded, and there I gave royal possession, in the name of His Majesty, whom may God preserve, to Felix de la Candelaria, in the name of his mother, Ana de Manzanares y Sandoval, in legal form, with the accustomed ceremonies that the law prescribes, leading him by the hand, and he tore up grass, threw stones, and shouted, and I now give said possession with the boundaries that are designated in her petition, and therefore the same are its boundaries: On the east by the Rio del Norte, on the west by the Rio Puerco, on the south by the house of Tome Domingues, and on the north by a ruin that is a little above the pueblo of San Clemente; and in the said boundaries I ordered mounds to be made, having first examined them, and I signed it with two attending witnesses; and that it may so appear I have signed, I, the said chief and war captain, with two attendin' witnesses, on the said day, month, and year as above.

ANTONIO GUTIERRES.

Attending witness,

ANTONIO CHABES.

Attending witness,

BALTAZAR ROMERO.

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# PLAINTIFF'S EXHIBIT K.

*Decree in Ana de Manzanarez case.*

In the Court of Private Land Claims, sitting in the Territory of New Mexico.

J. FRANCISCO CHAVES AND SOLOMON LUNA	} No. 64.
<i>vs.</i>	
UNITED STATES.	

This cause having hereto're come on for hearing upon the pleadings and exhibits on file, and upon proofs taken in open court, as well on behalf of defendants as on behalf of petitioners, full legal proof having been taken and counsel having been heard for said parties, and the petition

herein having been sustained by satisfactory proofs, the court, being now sufficiently advised in the premises, makes the following findings of fact:

1. That on the thirteenth day of July, in the year 1716, Ana de Sandoval y Manzanares, the widow of Blas de la Candelaria, presented to the then governor and captain-general of New Mexico, Don Phelix Martinez, her petition, praying that he grant her a piece of land called San Clemente, and setting forth the boundaries of said land as being on the north the lands of Christobal de Tapia, on the south the lands and walls of the house of Tome Dominguez, on the east the Rio del Norte, and on the west the Rio Puerco; that thereupon the said governor and captain-general made to her the grant which she asked, and com'anded the Captain Antonio Gutierrez to place her in possession with all the ceremonies of law; and that on the 23rd day of July, 1716, the said Captain Antonio Gutierrez, in pursuance of the com'and aforesaid of the governor, delivered possession of said land to Filix de la Candelaria as the representative of his mother, the said Ana de Sandoval y Manzanares, with the boundaries designated in her said petition, specifying the same to be, on the east the Rio del Norte, on the west the Rio Puerco,

73 on the south the house of Tome Domingues, and on the north a ruin, which is a little above the pueblo of San Clemente.

2. That the Rio del Norte, which constitutes the eastern boundary of said land, did not at the time of the making of said grant run in the same channel where it now does, but at some distance to the eastward of its present bed, and that the old river bed is the eastern boundary of said land, a portion or portions thereof lying east of the present river.

3. That the land included in said grant has been in the possession of said grantee, her heirs and legal representatives, continuously, from the year 1716 down to the present time, and that at least one of the petitioners in this cause, Solomon Luna, has succeeded in part to the rights of said original grantee, by inheritance for an ancestor, Domingo de Luna, who purchased portions of said land from heirs of the original grantee prior to the year 1750.

The court finds, as matter of law, that by reason of the facts hereinbefore set forth, a title to all of the land included within the boundaries aforesaid was vested in the said Ana de Sandoval y Manzanares, which title was complete and perfect at the date when the United States acquired sovereignty over the country now embraced within the Territory of New Mexico, within which said grant is situated, and that the petitioners herein are entitled to have the same confirmed to the heirs and legal representatives of the said Ana de Sandoval y Manzanares.

The court hereby specifies that the said land is located within the county of Valencia, in the Territory of New Mexico; that it is bounded on the north by an east and west line running through the point where the public road from Los Lentes to Ysleta crosses a lateral irrigating ditch running in an easterly direction from the main ditch or Acequia

74 Madre, which lies to the west of said road, which point is about three-quarters of a mile north of the chapel or church at Los

Lentes, and a short distance above a road which branches off from said first mentioned road and runs in a westerly direction toward the hills; on the east by the old river bed of the Rio Grande del Norte; on



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the south by the northern boundary line of the Nicolas Duran de Chaves grant, as heretofore fixed by a decree of this court and as shown by the survey of said grant made in pursuance of said decree and approved by this court on the 29th day of May, A. D. 1895; and on the west by the Rio Puerco, and that the estimated area of said land is about thirty-seven thousand acres.

It is therefor ordered and adjudged and decreed by the court that the claim for the land embraced within said grant as hereinbefore described and specified be, and the same hereby is, confirmed to the heirs and legal representatives of Ana de Sandoval y Manzanares, but this confirmation does not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same.

It is declared by the court that the confirmation in this decree contained in is made under Title XII of Book IV of the Recopilacion de Leyes de los Reynos de las Indias, the royal decree of the King of Spain of October 15, 1754, and the law of nations September 4, 1896.

HENRY C. SLUSS,  
*Associate Justice.*

(Here follows map, marked p. 75.)

76 And be it further remembered that thereafter, to wit, on June 2nd, 1897, the court rendered its decision in the words and figures following, to wit:

77 In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA,	}	No. 274.
<i>vs.</i>		
THE UNITED STATES.		

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA,	}	No. 275.
<i>vs.</i>		
THE UNITED STATES.		

These two cases having heretofore come on for hearing together upon the pleadings and exhibits on file and upon the proofs taken in open court upon behalf of the petitioners, and counsel having been heard as well on behalf of defendant as on behalf of the petitioners, the court, being now sufficiently advised in the premises, finds that the petitions, and all of the material allegations of fact therein contained, have been sustained by satisfactory proofs, and the court makes the following special findings of facts:

1. On November 5, 1716, the Spanish governor of New Mexico made to Antonio Gutierrez a grant of a tract of land described as bounded on the north by an arroyo with some cottonwood trees that comes down from the hills, on the south by the Pueblo of San Clemente, and on the east the Rio del Norte, on the west the hills of the Puerco River, which boundary calls are well-known objects, except that on the north, of the location of which there is no evidence.

2. At some time prior to the year 1734 a grant was made to Joaquin Sedillo, and he had also acquired and had in possession some additional land, the whole being bounded on the north by the line of the

78 league of the Pueblo of Isleta, on the south by a twin alamo sometimes called the Alamo de la Culebra, which boundary on the south was identical with the northern boundary of the above-mentioned grant to Antonio Gutierrez; on the east by the Rio del Norte, and on the west by the ceja of the Rio Puerco, these boundary calls being well-known objects, except that on the south, of the location of which there is no evidence.

3. In the year 1785 one Clemente Gutierrez died in possession of, and owning, the whole of the land of the said Antonio Gutierrez and Joaquin Sedillo, which was listed in the inventory of his estate made by his widow, as "the rancho commonly called San Clemente, Barrancas, and Los Pinos."

4. At some time prior to the 3rd of May, 1808, the pueblo of Isleta had acquired the title of Clemente Gutierrez to all of the said land lying on the west side of the present river bed of the Rio Grande del Norte and had entered into possession of the same and has held such possession down to the present time, the extent of the said land so acquired by said pueblo being from the boundary of the grant of the pueblo to the boundary of the lands of Los Lentos.

5. By a number of different deeds from the children and heirs of Clemente Gutierrez, beginning in the year 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to so much of the said lands as lie to the east of the present river bed of the Rio Grande del Norte, which portion of said lands is known as the Bosque de los Pinos, the northern boundary thereof being the line of the grant to the Pueblo of Isleta, and the southern boundary being the line of the lands of Los Lentos.

6. The northern boundary of the said lands of Los Lentos has been ascertained and fixed by this court in its decree of confirmation in the case of J. Francisco Chavez and Solomon Luna vs. The United States, which is numbered 64 on the docket of this court, as being the northern boundary of the land, the claim for which was confirmed in said decree.

7. After the making of the original grants the Rio Grande del Norte formed a new channel west of what was subsequently known as the Bosque de los Pinos, leaving its former river bed at a considerable distance east of the new one, and that portion of the land in question lying between the old and new river beds has since been known as the Bosque de los Pinos and it is that which was acquired by Francisco Xavier Chavez.

8. The petitioner, J. Francisco Chavez, is a grandson of the said Francisco Xavier Chavez and has inherited his title to the Bosque de los Pinos, which has been continuously in the possession of the said Francisco Xavier Chavez and his descendants since his purchase.

9. Clemente Gutierrez, and those deriving title under him, have been in the possession of the said land from some time prior to the distribution of his estate in 1875 down to the present time, at all times exercising dominion over it.

The court therefore finds, as matter of law, that the title held by Francisco Xavier Chavez and his descendants to that portion of the said lands lying between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, and the title

held by the Pueblo of Isleta to that portion of the said lands lying west of the present river bed of the Rio Grande del Norte, were complete and perfect titles at the date when the United States acquired sovereignty over the country now embraced within the territory of New Mexico and within which said lands are situate; and that the said J. Francisco Chavez and the pueblo of Isleta are entitled to a decree of confirmation of their respective claims; and that, under the special circumstances of the case, but one decree of confirmation ought to be entered for the whole of the land lying between the grant to the pueblo of Isleta and the northern line of the grant to Ana de Sandoval y Manzanares, and that the said two cases are to be taken and considered as consolidated for the purpose of such confirmation and decree.

And it is declared by the court that the confirmation in this decree contained is made under Title XII of Book IV of the *the* Recopilacion de Leyes de los Reynos de las Indias, the Spanish law of prescription, and the law of nations.

It is therefore ordered, adjudged, and decreed by the court that the claim for so much of the said land as lies between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, be, and the same hereby is, confirmed to the said J. Francisco Chavez; and that so much of the said land as lies to the west of the present river bed of the Rio Grande del Norte be, and the same hereby is, confirmed to the said pueblo of Isleta; but this confirmation does not confer any right or title to any gold, silver, quicksilver mines or minerals of the same.

The court declares and specifies that the said land, the claims for which are hereby confirmed, is situated in the county of Valencia, in the Territory of New Mexico, and is bounded on the north by the southern line of the pueblo grant to the pueblo of Isleta, as surveyed under the confirmation of the same by the Congress of the United States; on the east by the old river bed of the Rio Grande del Norte; on the south by the north line of the grant to Ana de Sandoval y Manzanares as established by the decree of this court in the case of J. Francisco Chavez and Solomon Luna vs. United States, numbered 64 on the docket of this court; and on the west by the ceja (being the divide between the Rio Puerco and the Rio del Norte) of the Rio Puerco; and that the area of the said land is estimated to be between thirty and thirty-five thousand acres.

81 In the Court of Private Land Claims.

J. FRANCISCO CHAVES }  
*vs.* } 274.  
 THE UNITED STATES. }

#### OPINION.

The questions presented for consideration in this case are, first, as to the boundaries of the land granted; and, second, whether the plaintiff, J. Francisco Chaves, or his copetitioner, the pueblo of Isleta, is so connected with the title as to authorize this proceeding. The facts are as follows: On November 5, 1716, the Spanish governor of New Mexico

made to Captain Antonio Gutierrez a grant of a tract of land described as bounded "on the north by an arroyo with some cottonwood trees that comes down from the hills; on the south by the pueblo of San Clemente; on the east, the Rio del Norte; on the west, the hills of the Puerco River." All these boundary calls are well-known objects except that on the north, and of the location of the latter there is no evidence. In 1785, Clemente Gutierrez having died, in a proceeding to partition his estate, an inventory of his estate was made by his widow, who gave her name as Maria Apolonia Baca, and among other tracts of land listed was one described as "the rancho, commonly called San Clemente, Barrancas, and Los Pinos." San Clemente was a well known abandoned Indian pueblo. Barrancas was a well-known bluff on the Rio Grande River, which formed the south boundary of the pueblo grant to the Indians of the pueblo of Isleta. Los Pinos was a well-known grove of pines along the Rio Grande River, between the other named points. In the partition proceeding referred to this tract of land was distributed in individual parts among the widow and children of Clemente Gutierrez. On May 3rd, 1808, Lorenzo Gutierrez delivered to the pueblo of Isleta a statement to the effect that he was the administrator of the estate of his mother, Josefa Polonia Baca, and that his predecessor, Mariano de la Pena, had conveyed to the Indians of the pueblo of Isleta the lands of his mother from the boundary of the pueblo to that of Los Lentes, and that the deed was in the possession of the alcalde of the first district of Albuquerque.

82 Lorenzo Gutierrez was the son of Clemente Gutierrez, and Mariano de la Pena was the husband of the daughter of Clemente Gutierrez. The Los Lentes were a settlement having a tract of land the north boundary of which was a short distance north of the abandoned San Clemente pueblo. After the making the grant to Antonio Gutierrez the Rio Grande formed a new channel west of the grove of pines for the entire distance from the Barrancas to San Clemente, and the tract lying between the old and new channels became known as Bosque de los Pinos.

In the years 1819 and 1821 by different deeds a number of the children and heirs of Clemente Gutierrez conveyed the Bosque de los Pinos to Francisco Xavier Chaves, giving the line of the pueblo grant as the north boundary, and the line of Los Lentes as the south boundary. The plaintiff J. Francisco Chaves is a descendant and inherits from Francisco Xavier Chaves. In the year 1822 the alcalde of the district, in a proceeding for that purpose, established the boundary line between the tract in question as the lands of the pueblo of Isleta, and the lands of Los Lentes. In 1826 the pueblo of Isleta made complaint to the governor of the Territory against a man who had made an unauthorized settlement in the tract in which they asserted their ownership, and that they had purchased the tract from "the house of Gutierrez." The Bosque de los Pinos has been in the possession of Francisco Xavier Chaves and his descendants since his purchase, and the pueblo of Isleta has been in possession of the remainder of the tract for a time beyond the memory of man. From these circumstances we think it is a fair inference that Clemente Gutierrez was the descendant and heir of Antonio Gutierrez. There is no reason to say that he was not. It is more probable that he inherited the title from Antonio Gutierrez than that he was a stranger to

the title. Clemente Gutierrez and those deriving title under him were in possession of the land from a time years prior to the distribution of the estate in 1785, and have continued in that possession from that time to the present, at all times exercising dominion over it, claiming ownership under the inheritance from Clemente Gutierrez. Under Spanish and Mexican law, as we think, this was sufficient to establish ownership. By law 1, book 4, title 15, of the Recopilacion, it was 83 provided that a title by prescription could be acquired, as against the Crown, of cities, towns, and villages, &c., by a possession of forty years. (See *New Orleans vs. United States*, 10 Peters, 724.) The Recopilacion and the Partidas were the fundamental laws of Spain (10 Peters, 724). By laws 9, 14, and 15, title 29, partida 3, it was provided that an inheritance was such a "just title" as was requisite to become the basis of title by prescription. By law 14, title 12, book 4, of the Recopilacion (2 White, 52) the right to acquire title by prescription against the Crown was recognized as applicable to public lands. The provisions and principles of this law were recognized and continued in force as to public lands by the 2nd article of the royal cedula of 1754. The fundamental principles of Spanish law as found in the Recopilacion and in the Partidas were not set aside by the independence of Mexico, but continued to be regarded and respected as the law of that country after independence. From a book entitled *Collection of the Laws and Decrees of the Cortes of Spain*, reputed to be in force in the Republic of the United States of Mexico (Mexico, 1829, press of Galvan), we quote:

"The independence of Mexico being fortunately realized by the occupation of its capital on the 27th of September, 1821, and the destruction of the viceregal government, although the bonds of dependence with Spain were broken forever, the laws that regulated the duties and rights of those who composed this new society could not and ought not remain without force, for, not being possible to renew them except after the lapse of time and by competent authorities, the sudden abolishment of all of them would be the same as the establishment of absolute anarchy when order was most needed. Thus it is that, with exception of those laws that conflict directly with the memorable plan of Iguala and the new order of things it created, all others that have emanated from the King of Spain and from the sovereign authority recognized until that day, were observed and respected, lawsuits were decided by them, justice was administered under them, and Mexicans adjusted their social life to their tenor. From this it resulted that the Spanish codes, which 84 it has not yet been possible to substitute by other new ones, are eagerly sought for by the judges, professors, and even by plain citizens, in as much as they find in them the guide for their actions, the guarantee of their reciprocal rights, and the rule for their procedure."

We think, therefore, that forty years' possession proceeding upon a title by inheritance is sufficient evidence of a perfect title to the whole tract so possessed as against both Spain and Mexico, and sufficient to show a connection of such possession with the original grant.

In the recent case of *United States vs. Chaves*, 159 U. S., 451, it is said: "We do not wish to be understood as undervaluing the fact of a possession so long and uninterrupted as disclosed in this case. Without

going at length into the subject, it may be safely said that by the weight of authority, as well as by preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse and uninterrupted possession for twenty years, and that such rule will be applied as *presumptio juris et de jure* wherever by possibility a right may be acquired in any manner known to the law. 1 Greenleaf Ev., 12th ed., sec. 17; Richard vs. Williams, 7 Wheat., 59, 109; Coolidge vs. Learned, 8 Pick., 503. Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time accompanied by acts done, or other circumstances, may warrant the jury in presuming a grant or title by record. Thus, also, though lapse of time does not of itself furnish a conclusive bar to the title of the sovereign, agreeably to the maxim *nullum tempus occurrit regi*; yet if the adverse claim could have had a legal commencement juries are advised or instructed to presume such commencement, after many years of uninterrupted possession or enjoyment. Accordingly, royal grants have been thus found by the jury after an indefinitely long continued peaceful enjoyment, accompanied by the usual acts of ownership. 1 Greenl. Ev., sec. 45. The principle on which this doctrine rests is one of general jurisprudence, and is recognized in the Roman law and the codes founded thereon, Best's Principles of Evidence, sec. 366, and was *thereofre* a feature of the Mexican law at the time of the cession."

85 We are justified in supposing that this language was intended for our guidance, and we think it is aptly applicable to the facts of this case.

On the whole case, we think the evidence is sufficient to show a title such is entitled to be confirmed as a perfect title.

There will be a confirmation of the tract known as Bosque de los Pinos to J. Francisco Chaves, and the tract claimed by the Pueblo of Isleta will be confirmed to the Pueblo of Isleta.

The decree should definitely describe the boundaries of each tract, the north boundary being at the south line of the Pueblo grant to the Pueblo of Isleta as surveyed under the confirmation of the same by Congress.

(Signed)

HENRY C. SLUSS,  
*Associate Justice.*

(Endorsed:) Case No. 274. J. Francisco Chaves vs. United States. Opinion of the court. Filed in the office of the clerk of the Court of Private Land Claims June 2d, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

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#### DISSENTING OPINION.

In the Court of Private Land Claims.

J. FRANCISCO CHAVES AND THE  
Pueblo of Isleta  
vs.  
UNITED STATES.

No. 274. Bosque de los Pinos.

The claims in this case were filed under the provision of section 8 of the act of March 3rd, 1891, which provides for the confirmation of titles



to land derived from the Spanish or Mexican Governments that was complete and perfect at the date when the United States acquired sovereignty therein, etc.

The grant which is the basis of the claim was made by the Spanish Government on the 5th day of November, 1716, to one Antonio Gutierrez. The grant is genuine, but was not confirmed as required by article 5 of the royal instruction of October 15, 1754.

Hall's Mexican Law, page 28.

It is claimed by counsel for petitioners:

"That the land originally granted to Antonio Gutierrez was transferred by him to Diego Padilla, and that Diego Padilla conveyed to Diego Borego, who conveyed the same to Nicolas de Chaves, these conveyances being made in the years 1734 and 1736. It also appears from archive 371 in the surveyor-general's office that some time prior to the year 1785 the land claimed had become the property of one Clemente Gutierrez. The petitioners claim under deeds from the heirs of Clemente Gutierrez. It does not appear how Clemente Gutierrez acquired possession or title to the land, nor does it appear that he was in any way related to the original grantee or to Nicolas de Chaves. The petitioners claim under the grant to Antonio Gutierrez, but introduced on the trial deeds from the heirs of Clemente Gutierrez. It was admitted by counsel at the trial that he had failed to connect the claimants with Antonio Gutierrez by record or parol evidence. The claim must therefore stand alone on deeds introduced on the trial (not mentioned in the petition) from the heirs of Clemente Gutierrez. The court is asked to presume that Clemente Gutierrez was an heir of Antonio Gutierrez and to connect the petitioners with the grantee by a regular chain of title. It must further presume that Clemente Gutierrez had in some way acquired the title from Nicolas de Chaves. But if these difficulties were out of the way this is

87 not such a claim as the court is authorized to confirm by the provisions of the 8th section of the act of March 3rd, 1891. It is not pretended that the grant was ever confirmed as required by the royal instructions of 1754. The grant is therefore incomplete and imperfect and is barred by the statute of limitations, not having been filed until 1896. If the court shall be governed by the admission of petitioner's counsel, that he had failed by evidence to connect the petitioners with the grantee, this court has no jurisdiction to adjudicate the claim. A claim based on deeds from private parties unconnected with a grant or some other form of title made by an officer of the Spanish or Mexican Government authorized by law to make it is not a claim upon a title lawfully and regularly derived from the Government of Spain or Mexico. See section 13, act of March 3rd, 1891, Reynolds' Compilation, page 14.

A majority of my brethren are of the opinion that forty years' possession and occupation of the land perfected the title by prescription, and being so perfected according to the laws of Spain and Mexico, it is such a claim as this court is authorized to confirm. This brings me to an examination of the law of prescription. 'In the first place, the maxim, "Nullum tempus occurrit regi," applies to the Crown of Spain and the Republic of Mexico. The vacant public lands belonged to the Crown. The King is the source of all law. So, if the position assumed by the court is correct, the right to prescribe against the King must be found in

some law, order, or decree to which he has given his assent. The law of prescription is as old as the civil law. Justinian fixes the time in which possessory title to immovable things may be acquired at 26 years, but such title would not enable the party to sustain an action for the recovery of the property if possession was lost. There is some apparent confusion in the laws in force in Spain on the question of prescription, but an examination of the character of things prescribed by the two kinds of prescription, "immemorial and temporal," the difficulty is removed. Immemorial and temporal prescription is discussed together, when, in the very nature of the things prescribed and the manner of proving rights by prescription, they should be treated separate. I can

88 better illustrate by reference to 1st White's Recompilation, pages 91, 92, and 93. It is there said: "Prescription is to hold the property or thing of another for a certain time, and to make it thereby one's own, so that the right owner cannot afterwards deprive you of it. To constitute prescription, good faith (*buena fe*), just title, and a capacity of the thing for the purpose, and of the person who prescribes, are necessary; as also continued or uninterrupted possession for a determinate time." "Just title consists in the cause or consideration by which possession of the thing is obtained, being one of those by reason of which dominion is acquir'd—as purchase, gift, inheritance, etc."

This definition is too general to be applied to immemorial prescription, or to temporal prescription when possession is acquired without just title. "Temporal prescription is confined or limited to a certain number of years. To this sort belong, 1st, the limitation of a year in which the claim to the penalty incurred by judicial bail for not producing the person bailed is prescribed. The prescription of three years in which personal property is acquired, \* \* \*. The prescription of ten years, in which real property (*las raices*) is acquired among persons present, \* \* \*. That of 20 years, which prescribes the right of absent persons to real property \* \* \*. That of 30 years, in which property generally is acquired, even without good faith \* \* \*." 1 White's Recompilation, pages 95, 96.

Thirty years' possession of land without good faith, and, I will add, on just title, will enable the possessor to hold by prescription against a private party.

The rule of law requiring good faith and just title to enable a possessor of land to avail himself of prescription is necessarily confined to cases of purchase, gift, or inheritance, and therefore cannot be applied to immemorial prescription, nor to cases where parties acquire possession of land without title. Immemorial prescription proceeds upon the idea that the possessor never had title, or from lapse of time (forty years) is unable to produce it. Possession, therefore, must be proven "by witnesses of good fame or character, who depose to having seen the person in possession of the thing or property for 40 years, and

89 having heard their ancestors say that they never heard anything to the contrary." 1 White's, page 95.

As before stated, this kind of prescription has no application to cases where parties are in possession of land claiming under any sort of title, either from the Government or deeds from private parties, but is expressly confined "to the seign'ory or dominion of cities, towns, and

civil and criminal jurisdictions, but not to that which kings possess by their preeminence and prerogatives, nor taxes, nor tributes." *Id.*, 95.

The royal instruction of October 15, 1754, with slight modifications, was in force in Spain at the date of Mexican independence. It will be found in Reynolds' Compilation, pages 50, 51, 52, 53, 54, 55, 56, and 57. This law provided a complete system for the settlement of titles to land in the Kingdom which had been issued prior and subsequent to the year 1700. Parties long in possession of land without title prior to the year 1700 were allowed to prove such long possession as just title by prescription "with the understanding that if said royal lands are not cultivated or *farmed* they give them the term of three months provided by law 11 of said book and title, or that which appears best for them to do, so with notice that on the contrary they will be granted to whoever denounces them with the same obligation to cultivate them." This was an act of grace and favor by the Crown to persons long in possession without title. It is not a recognition by the King that title had been acquired by long possession, but, on the contrary, they were permitted to acquire title on the conditions that within the time prescribed the land should *by* cultivated as prescribed by law, otherwise it was to be granted to others on the same condition, to cultivate it. It will be noticed that all persons claiming land by title of any kind issued by the King's officers, without reference to the length of time they had been in possession, were required to submit their titles to the proper officers and have the fact of such presentation noted on the title papers.

No one going into possession without title subsequent to the year 1700 were allowed the privilege given to those long in possession prior to the year 1700, though parties might have been in possession more  
90 than forty years prior to the year 1700 to the date of the royal instructions. On the contrary, land so held "shall be adjudged to the royal patrimony, although they are farmed, planted, or have factories" if the trespassing holders failed to comply with the requirements of article 7 of said instructions.

Parties in possession under grants made subsequent to the year 1700 which had not been confirmed by the King were required by article 5 of said instructions "to apply for the confirmation thereof to the audiences in their district, and to other officers to whom the power is given by these new instructions." It was the duty of said officers to examine as to whether the sale or composition was made without fraud or collusion, etc., and if it appears that the price of sale and composition, taxes, etc., had been paid, said officers were to issue to them, in the King's name, confirmation of their titles.

I have been unable to find any law of Spain which supports the doctrine that title by prescription could be acquired against the Crown. Neither have I found a single instance where the holder's of imperfect titles have been permitted to plead any lapse of time as an excuse for their failure to comply with the requirements of law in relation to the confirmation of their titles.

Mr. Orosco, in his excellent work on Legislation and Jurisprudence on Public Land, published in 1895, discusses at great length the royal instructions of 1754, from which I copy the following extracts: "In the absence of a suit or legitimate interest of a third party, we have already

seen that the possessor has a right to demand from the Government a revalidation of his title, and in that case it is idle to inquire if a document of that character may operate or not as a just title upon which to build the right of prescription. If the defective title is produced in a suit with a third party who denounces a tract as vacant, we believe that such a title will not be sufficient as a basis for the right of prescription. The title given by a special judge would not convey the dominion in the land sold or granted to a private individual or to a corporation capable of acquiring until the said title received the royal confirmation,

91 hence the possessor of a tract the title to which lacks confirmation or annotation, never in reality acquired title by purchase or grant to the land possessed by him, and in the absence of the 'just title' by dominion, the prescription to acquire the land could not begin to run in his favor," as the requirements of confirmation was prescribed by law; ignorance of its being necessary cannot be alleged, for in no case will ignorance of the laws of the country excuse any one."

"Unconfirmed titles issued from the year 1700 on are only valid by the new payments which the interested parties may make into the public treasury in accordance with what may be provided in this regard by the royal audiences and by the solemn requirements of confirmation which the said audiences shall issue in the name of the sovereign. This is different from what happens with titles issued prior to 1700, which do not require confirmation, and with regard to which it is not necessary to make new payments for their complete validity agreeably with what we have said at the proper place."

"The provision provides that there shall be made a new payment to be fixed by the prudent discretion of the royal audiences as a condition to the issuance of confirmation for a title that is devoid if made subsequent to the year 1699 has not been repealed. Therefore, if a holder of a title of that kind has recourse at the present day to the president of the republic, asking that the defects in his title be corrected, he will certainly be obliged to pay into the national treasury such sum of money as the executive equitably and prudently may fix, and the executive can not wholly dispense with this payment, only when he is expressly given the authority to dispense with taxes and other property of the public treasury."

"Titles lacking confirmation is certainly insufficient to justify the dominion of a tract of land as against the nation, for the requisites of confirmation is material and has been dispensed with only in the case of titles prior to 1700, on condition that they were to be presented before the subdelegates or royal commissioner and duly annotated by them."

92 Without pursuing this further, it is quite clear to me that the grant in this case is incomplete and imperfect and not in any way affected by prescription. Tested by the laws of Spain and Mexico, to which we are limited by the act creating the court, on all the grounds herein set out, the claim should be rejected and the petition dismissed.

(Signed)

WM. W. MURRAY,  
*Associate Justice.*

(Endorsed:) Case No. 274. J. Francisco Chavez vs. United States. Filed in the office of the clerk of the Court of Private Land Claims June 2d, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

93

UNITED STATES OF AMERICA, *ss.*

Court of Private Land Claims, Santa Fe district.

J. FRANCISCO CHAVES AND PUEBLO OF ISLETA,	} No. 274. An-
plaintiffs and appellee,	
<i>vs.</i>	
THE UNITED STATES, DEFENDANT AND APPELLANT.	tonio Gutierrez grant.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the 2nd day of June, 1897, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,  
*U. S. Attorney for Defendant and Appellant.*

It is ordered that an appeal be, and hereby is, allowed as prayed for.  
This Oct. 11, 1897.

JOSEPH R. REED, *Chief Justice.*

94

*Citation on appeal to Supreme Court.*UNITED STATES OF AMERICA, *ss.*

*The President of the United States to J. Francisco Chavez and Pueblo of Isleta, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, being cause No. 275 on the dockets of said Court of Private Land Claims, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,  
*Associate Justice, Court of Private Land Claims.*

We hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this sixteenth day of October, 1897.

F. W. CLANCY,  
*Attorney for J. Francisco Chavez.*

G. L. SOLIGNAC,  
*Attorney for Pueblo of Isleta.*

95 UNITED STATES OF AMERICA,  
*Territory of New Mexico:*

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 94 pages contain a full, true, and perfect transcript of all record entries and proceedings, and of all the files and papers in the cause lately pending in said court in which J. Francisco Chavez and the Pueblo of Isleta were plaintiffs and the United States were defendants, No. 274, as the same appear of record and on file in my office.

Witness my hand and the seal of said court at my office at Santa Fe, New Mexico, this 1st day of December, A. D. 1897.

[SEAL.]

JAMES H. REEDER, *Clerk*,  
Per IRENEO L. CHAVES, *Deputy*.

(Indorsement on cover:) Case No. 16742. Court of Private Land Claims, term No. 207. The United States, appellant, vs. J. Francisco Chavez and Pueblo of Isleta. Filed December 9, 1897. Office Supreme Court of U. S. Received Dec. 9, 1897.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 208.

THE UNITED STATES, APPELLANT,

VS.

J. FRANCISCO CHAVEZ AND PUEBLO OF ISLETA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,  
*Territory of New Mexico, ss:*

Be it remembered that heretofore, to wit, on the 9th day of September, 1896, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }  
*vs.*  
 THE UNITED STATES. }

*To the honorable chief justice and associate justices of said court:*

Your petitioner, J. Francisco Chavez, resident of the county of Valencia, in the Territory of New Mexico, brings this, his petition, against the United States, and thereupon shows to the court the following:

1. At some time in the early part of the eighteenth century a grant of land was made by the proper authorities of the Government of Spain to one Joaquin Sedillo, which land lies immediately south of the lands of the Indian pueblo of Isleta and was bounded on the north by the line of the league of said pueblo, on the east by the Rio Grande, on the south by a twin alamo, called by some the alamo de la culebra, and on the west by the ceja of the Rio Puercio; but the original grant papers evidencing the said grant have been lost or destroyed and can not now be produced. The fact of the existence of the said grant is, however, shown by papers which constitute a portion of archive 178 in the office of the surveyor-general for New Mexico, copies and translations whereof are filed herewith in duplicate.

2. From the time of the making of said grant, the said Joaquin Sedillo and his lawful successors in title have been in continuous, peaceable, and uninterrupted possession of the land embraced within the grant down to the present time.

3. To the best of the knowledge, information, and belief of this petitioner there are no persons in possession of or claiming said tract of land, or any part thereof, adversely to the claim of this petitioner.

4. The said land is situate in the county of Valencia, in the Territory of New Mexico, and the boundaries thereof are as hereinbefore set forth; but it is expressly averred that the eastern boundary refers to the old river bed of the Rio Grande, which is about two miles further east than the present bed of that river. It is impossible to state, even approximately, the quantity of land embraced in said grant, as no survey thereof has ever been made, but it is estimated to be between ten thousand and fifteen thousand acres, a map thereof showing the same as near as may be being filed herewith. The southern boundary hereinbefore mentioned has, as petitioner is informed and believes, been completely destroyed and its location can not now be identified with certainty, and it is probable that no tradition of its location now exists for the reason that the said tract of land and the one immediately south thereof had become united in

ownership in the hands of one person as early as the year 1734, as will fully appear by reference to the said archive 178 hereinbefore mentioned.

5. No claim for the said grant has heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

6. This petitioner avers that the title to said grant was complete and perfect at the date when the United States acquired sovereignty in New Mexico, and that this petitioner has succeeded in part to the rights of the original grantee, the said Joaquin Sedillo.

4 Your petitioner therefore prays that the validity of the said title may be inquired into and decided by this honorable court, and that the same may be confirmed to the heirs and legal representatives of the said Joaquin Sedillo.

J. FRANCISCO CHAVEZ,  
*Petitioner,*  
By F. W. CLANCY,  
*His Solicitor.*

5 And be it further remembered that thereafter, to wit, on the 11th day of November, A. D. 1896, an abstract of title was filed in the office of the clerk; which said abstract of title is in the words and figures following, to wit:

6 In the Court of Private Land Claims, sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ }  
*vs.*  
UNITED STATES. }

*Abstract of title.*

The claimant is unable to present any direct conveyance from the original grantee or from his heirs with which he is in any way connected, but he relies upon archive No. 178, in the office of the surveyor-general for New Mexico, to show that the heirs of Joaquin Sedillo in the year 1734 sold and conveyed the said tract of land to Diego Borrego, and that the latter in the year 1736 conveyed the said land to Nicolas de Chavez. Copies and translations in triplicate of said archive No. 178 have been filed with the petition herein.

The claimant relies upon archive No. 371, in the office of the surveyor-general for New Mexico, to show that at some time prior to the year 1785 the said land had become the property of Clemente Gutierrez. The said archive No. 371 is a record of proceedings as to the estate of said Clemente Gutierrez, and claimant files herewith copies and translations in triplicate of so much thereof as shows the inventory of all the real estate belonging to said Clemente Gutierrez and the *hijuela* given to each of the heirs showing their respective shares of said real estate.

Claimant relies upon the following-described deeds to connect him with

the title of said Clemente Gutierrez, and through him with the original title to the grant :

7 Deed of Jose Lorenzo de la Pena, for himself and his sister Mariana and his brother Jose Rafael de la Pena, to Francisco Xavier Chavez, dated September 20th, 1818, for an undivided fifth of the Bosque de los Pinos, bounded on the north by the lands the pueblo of Isleta, on the south by the lands known as those of Los Lentos, on the east by the hills, and on the west by the Rio del Norte, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente Gutierrez, to Francisco Xavier Chavez, for an undivided interest in the ranch of the Bosque de los Pinos, bounded on the north by the league of the pueblo of Isleta, on the south by residents of Valencia, on the east the plain, and on the west the Rio del Norte, dated October 19, 1821, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

A deed from Juan Nepomuceno Gutierrez and Apolonia Gutierrez to validate the sale made by their father, Lorenzo Gutierrez, of the portion to which he and Lorenza Gutierrez were entitled in the Bosque de los Pinos, dated December 27th, 1839, a translation of which deed, made by the official translator of the office of the surveyor-general of New Mexico in the year 1855, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Claimant avers that the originals of the three deed' above described were filed in the office of the surveyor-general in 1855, and that they appear to have been withdrawn from that office by J. Bonifacio Chavez on the       day of       , 187    , and can not now be found, although the official translations made at that time have been preserved.

The said Francisco Xavier Chavez, to whom the said deeds were made, was the grandfather of this claimant, and claimant has inherited from his said grandfather an interest in the property conveyed by said deeds.

8 And be it further remembered that thereafter, to wit, on the 27th day of October, A. D. 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit :

9 In the Court of Private Land Claims, Santa Fe district, 1896.

J. FRANCISCO CHAVEZ }  
                                   *vs.* } No. 275.  
 UNITED STATES. }

*Answer.*

Now comes the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition in the above-entitled cause, says: That it has

not sufficient information upon which to base a belief as to whether or not it is true, as alleged in said petition, that in the early part of the eighteenth century a grant of land was made by the proper authorities of the Government of Spain to one Joaquin Sedillo of the tract of land described in claimant's petition; defendant accordingly denies the truth of said allegation and demands strict proof thereof.

Defendant further answering denies that the said Joaquin Sedillo and his lawful successors in title have been in the continuous, peaceable, and uninterrupted possession of the land described in said petition down to the present time, and further denies that if there was a grant made as alleged by plaintiff, the boundaries thereof were as stated in plaintiff's petition.

Defendants admits that no claim for said grant has heretofore been confirmed, considered, or acted upon by Congress, or the authorities of the United States, or been heretofore submitted to the authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

Defendant, further answering, denies that the title to said grant was complete and perfect at the date when the United States acquired sovereignty over the Territory of New Mexico, and further denies that the petitioner has succeeded in part to the rights of the said Joaquin Sedillo, or that he holds under the said Joaquin Sedillo, or has ever claimed that he so holds.

As to the other allegations of claimant's petition, defendant shows that he has not sufficient knowledge upon which to base an opinion as to the truth or falsity thereof, and accordingly denies the truth of said  
10 allegations and each of them, and prays that plaintiff be put to strict proof of the truth thereof.

Now, having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,  
U. S. Attorney.

11 And be it further remembered that thereafter, to wit, on the  
13th day of November, 1896, the petition of the pueblo of Isleta to be made copetitioners was filed in the office of the clerk; which said petition is in the words and figures following, to wit:

12 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }

vs.

UNITED STATES. }

*To the honorable chief justice and associate justices of said court:*

Your petitioner, the pueblo of Isleta, a body corporate situated in the county of Valencia, Territory of New Mexico, respectfully prays to be allowed to offer in this cause, as a copetitioner with the said J. Francisco Chavez, and adopts as its own, all of the allegations of the petition of said J. Francisco Chavez heretofore filed herein, with the same effect

as though they were here at length represented and in terms made applicable to this petitioner, the same as in said petition they are applicable to said J. Francisco Chavez, consenting and agreeing that the answer filed on behalf of the respondents may be taken and considered as our answer to the claim of this petitioner, the same as though it had appeared originally as a copetitioner with said Chavez; and join in the prayer of the petition of said Chavez that the validity of the title therein set off may be inquired into and decided by this honorable court, and that the same may be confirmed to the heirs and legal representatives of Joaquin Sedillo.

G. L. SOLIGNAC,

*Attorney for the Corporation of the Pueblo of Isleta.*

13 And be it further remembered that on the 13th day of Nov., A. D. 1897, the same being a day of the regular Nov. term, 1897, holden at the city of Santa Fe, Territory of New Mexico, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* } No. 275. Joaquin Sedillo grant.  
 THE UNITED STATES. }

This cause coming on to be heard upon the petition of the pueblo of Isleta on file in this cause, and being submitted by counsel, G. L. Solignac appearing for said petitioner and W. H. Pope, esq., assistant United States attorney, appearing for defendants, the court being sufficiently advised in the premises, grants the prayer of said petition.

It is therefore ordered by the court that said pueblo of Isleta be, and it is hereby, permitted to come into this cause as a copetitioner with said J. Francisco Chavez.

14 And be it further remembered that on the 5th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* } No. 275. Joaquin Sedillo grant.  
 THE UNITED STATES. }

The above-entitled cause now coming on to be heard, there appeared Frank W. Clancy, esq., for the plaintiffs; W. H. Pope, esq., appeared for the said defendant, The United States; G. L. Solignac, esq., representing the pueblo of Isleta. The parties announcing themselves ready, the trial of the cause was proceeded with, and the said cause not being completed the court adjourned until to-morrow.

15 And be it further remembered that thereafter, to wit, on the 6th day of May, A. D. 1896, the same being a day of the regular May term, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* }  
 UNITED STATES. }

The above-entitled cause now coming on to be heard, all the attorneys in the cause being present, all the testimony in said cause was presented and the arguments were postponed until to-morrow.

16 And be it further remembered that on the 7th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }  
*vs.* } No. 275. Joaquin Sedillo grant.  
 THE UNITED STATES. }

The above-entitled cause now coming on to be further heard, all the attorneys in the case being present, after hearing the arguments of the counsel the court took the cause under advisement.

17 And on the trial of said cause the following testimony, oral and documentary, was offered and introduced:

18 In the Court of Private Land Claims, Santa Fe, New Mexico, May term, 1897.

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }  
*vs.* } No. 274.  
 THE UNITED STATES. }

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }  
*vs.* } No. 275.  
 THE UNITED STATES. }

On May 5th, 1897, the above-named cases came up for trial, and the following proceedings were had therein in open court:

Appearances: Frank W. Clancy, esq., for J. Francisco Chaves; G. L. Solignac, esq., for the pueblo of Isleta; William H. Pope, esq., assistant United States attorney, for the Government.

MR. CLANCY. I will read the petition.

MR. CLANCY. We offer in evidence archive number 315, from the office of the surveyor-general of New Mexico (marked "Plaintiff's Exhibit A").

Also archive number 178 (marked "Plaintiff's Exhibit B").

Also a portion of archive number 371, that is, all of that archive that shows the inventory of the real estate belonging to Clemente Gutierrez and giving to each of the heirs their respective parts of the real estate (marked "Plaintiff's Exhibit C").

We also offer in evidence a deed made September 20th, 1818, by Jose Lorenzo de la Pena, for himself and his sister, Mariana, and his brother, Jose Rafael de la Pena, to Francisco Xavier Chaves, for an undivided fifth of the Bosque de los Pinos, this being an official translation made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico (marked "Plaintiff's Exhibit D").

Also offer in evidence a deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente

19 Gutierrez, to Francisco Xavier Chaves, for an undivided interest in the ranch of the Bosque de los Pinos, dated October 19th, 1821, and of this deed we offer an official translation made by



the official translator in the office of the surveyor-general for New Mexico, in the year 1855 (marked "Plaintiff's Exhibit E").

We also offer in evidence the translation of a deed made by the official translator of the office of the surveyor-general for New Mexico in the year 1855, from Juan Nepomuceno Gutierrez and Apolonia Gutierrez, to validate a sale made by their father, Loranzo Gutierrez, in the Bosque de los Pinos, dated December 27th, 1839 (marked "Plaintiff's Exhibit F").

We also offer in evidence an original deed, or document of evidence of title at least, dated May 3rd, 1808, from Lorenzo Gutierrez, in favor of the Indians of the pueblo of Isleta (marked "Plaintiff's Exhibit G").

We also offer in evidence a report by Manuel Lucero, an alcalde, to the governor of New Mexico, dated June 14th, 1826, as to certain disputes among the Indians, with regard to other lands in question here (marked "Plaintiff's Exhibit H").

We also offer in evidence an official certificate made by Jose Antonio Chaves Duran, who was an alcalde mayor of the pueblo of Isleta, as to the making of a measurement of these lands which are now claimed in these two cases, on the west side of the river between the lands of Isleta and the lands of Los Lentos (marked "Plaintiff's Exhibit I").

Mr. FOPE. We shall move to strike them out if upon an examination they are not competent.

MAY 6TH, 1897, 10 A. M.

J. FRANCISCO CHAVES, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon direct examination, as follows:

By Mr. CLANCY:

Q. What is your name, age, and residence?

A. J. Francisco Chaves; my residence is Progreso, in Valencia County, New Mexico; age, nearly 64.

Q. Are you acquainted with the tract of land that is commonly known as Bosque de los Pinos, in Valencia County, New Mexico; and, if so, when did you first become acquainted with that tract of land?

A. Yes, sir; I think about 1839 I became personally acquainted with it; at that time I lived at Los Padillas, which is now in the county of Bernalillo, the place of my birth.

Q. Who lived at the Bosque de los Pinos at that time?

A. Retainer of my grandmother's, who was then the owner of the place, by the owner, Jose Manuel Olguin.

Q. Who was the father of your grandfather?

A. Francisco Xavier Chaves.

Q. When did he die, if you know?

A. I only know by the records; I think in 1829, before I was born.

Q. From what has been told you and the family, do you know where he liv'd at the time of his death and for some years before that time?

A. He lived always at Los Padillas.

Q. Then he never re'ided at Bosque de los Pinos?

A. Never re'ided at Bosque de los Pinos.

Q. Do you know what, if anything, he did with the possession of Bosque de los Pinos before his death?

A. He possessed it, farmed it, kept cattle and sheep upon it; it was wooded from there to Los Padillas, a large body of timber there at that time; there is a pretty good-sized body of timber there now.

Q. Since the time that you have had personal knowledge of that property, who has had possession and control of it from that time down to the present?

A. My father, subsequently my mother, after my father's death in 1844, and then my mother married Dr. Connolly, and then it went to her heirs after her death. If you desire the names of the children I will give their names.

Q. Has that possession been in any way disturbed or encroached upon by other people?

A. Never.

Q. What are the boundaries of that particular piece of land called the Bosque de los Pinos?

A. Bounded on the north by the Isleta Indian pueblo lands; on the east by the old river bed; a stone marks the northeast boundary; and on the south by the town of Peralta; on the west by the present river.

Do you know under what title or deeds of conveyance, if any, your family has claimed and possessed that tract of land?

A. Yes, sir; we claim title under, I believe, Clemente Gutierrez and his heirs.

21 Q. Who were the owners of that piece of land?

A. At the time that my grandfather purchased—

Q. That is, you claim through his heirs?

A. There are several of them; Clemente Gutierrez, he already died; it was through his will.

Q. Examine this paper which I have offered in evidence in this case and marked "Plaintiff's Exhibit D, E, and F," and state if they are translations of the deeds from the Gutierrez heirs under which your family claim the Bosque de los Pinos.

A. Yes, sir; I believe they are correct translations of the copies of the deeds made to my grandfather.

Q. Do you know what has become of the originals of these deeds?

A. I do not, unless they are here in the surveyor-general's office.

Q. Have you made any search for them among your papers or those of your family?

A. Yes, sir; they are not at our place at all. I will state here that when the rebel troops had possession of our house in 1862—about the month of April, 1862—that nearly every paper—we had a very large amount of property—was destroyed, and a great many valuable in real estate were discovered afterwards among the corrals and the outhouses. Some are entirely lost.

Q. Who was J. Bonifacio Chaves?

A. He was my youngest brother.

Q. Is he living or dead?

A. He is dead.

Mr. CLANCY. Mr. Pope, will you admit that the records in the office of the surveyor-general show that the originals of these deeds were withdrawn from that office by J. Bonifacio Chaves about the year 1871,

which accounts for their absence from the files of that office, although it does not account for what became of them afterwards?

Mr. POPE. I will admit this.

Q. Have you made at any time, or caused to be made, search among the papers of your brother's for the originals of these deeds?

A. Yes, sir; I have, and I have not discovered anything. His wife became quite sick and she died in this city six or seven years ago, and I asked her to give me all the papers of my brother had that belonged to our family, and she gave me some papers, but none of th'se papers were among them, because I have all the papers that I got from her.

22 Q. Are you acquainted with the lands on the west side of the present river lying between the pueblo grant to the pueblo of Isleta and the lands of Los Lentes?

A. Yes, sir.

Q. In whose possession have these lands been since you have known them?

A. Well, originally—many years ago, say probably forty years ago—they were held chiefly by the people of the town of Los Lentes. There is a river runs up very near the sand hills and from that point south it is called Los Charcos—means the pools; water collects and runs, overflows the acequia, and remains for a long time, and close to the sand hills the Indians occupied a place there and the Indians of Isleta, but now—but most of them are within, I think, a mile of the town of Los Lentes—are occupied by the Indians of the town of Isleta; about a mile from the present site of Los Lentes is occupied by the people of Los Lentes, and from there north, probably two miles and a half, I do not know—well, about four miles—is occupied entirely by the Indians now.

Q. Have you ever heard that stretch of land called the compra?

A. Yes, sir; always that land has been called the compra; that is the way they spoke of that land.

Q. Have you ever known or heard from whom they purchased these lands?

A. No; I never.

Q. That is all.

Mr. POPE. That is all.

Mr. CLANCY. It is admitted by the United States to be a fact that the pueblo of Isleta has had open and notorious possession and use of lands on the west side of the Rio Grande along between the boundary of the pueblo and the lands of the Los Lentes as far back as the memory of the oldest man living within the pueblo can extend, and that such possession and use have been claimed to be under a purchase from the heirs of Clemente Gutierrez, of which some documentary evidence has been presented in the paper executed by Lorenzo Gutierrez, dated May 3rd, 1808, and that said paper, which is marked "Plaintiff's Exhibit G," and also Plaintiff's Exhibits H and I, come from the custody and control of the officers of said pueblo, who have had them as far back as memory can extend.

23 Mr. CLANCY. I desire to offer in evidence the original petition and grant to Ana de Manzanares for the tract of land commonly known as the San Clemente grant, and also the decree of this court confirming the claim for that grant (marked "Plaintiff's Exhibits J and K").

Mr. POPE. No objection.

Q. Col. Chaves, are you familiar with the section of country where are situated the lands in question in this case known as the San Clemente and Isleta grants?

A. Yes, sir; I am.

Q. And with the location of towns and other natural objects in that vicinity?

A. Yes, sir.

Q. Will you examine this sketch map and state where upon that the location of Los Lunas, Los Lentes, Los Pinos, the Rio Grande, and its old bed—whether they are approximately accurate or not.

A. This map that is made is substantially correct; it shows the lines of the Isleta grant and the lands in question, the San Clemente grant, and the Jose Sedillo grant, as far as I am able to ascertain the grant of Gutierrez; it also shows the Rio Grande now, and also the old bed of the river as it ran many years ago, beyond the memory of any living man, and the Rio Puerco; also Los Lunas and Los Lentes.

Mr. POPE. Q. Your only knowledge of the location of the Sedillo and Gutierrez grants is derived from these title papers you presented here?

A. Yes, sir; and the gentleman's (Mr. Pope) argument at the last term of court.

Mr. CLANCY. I will offer this sketch map in evidence (marked "Plaintiff's Exhibit L").

SHERARD COLEMAN, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Clancy as follows:

Q. What is your business in life?

A. I am surveyor by occupation.

Q. Have you had occasion in connection with your business as surveyor to make any examination of the section of country just south of the pueblo of Isleta in this Territory?

A. Yes, sir.

24 Q. Can you from the knowledge derived from that examination state what is the distance from Los Lentes to the pueblo of Isleta?

A. At the time I made this survey it was six miles 39 chains and 54 links in a measured line from the church of the pueblo of Isleta with the old ruins of San Clemente; these old ruins of San Clemente are just below the town of Los Lentes, I should say about 600 yards from the chapel.

Q. In a straight line from the chapel to the ruins?

A. In a straight line in a southeasterly direction.

Q. In a north and south direction about how far is the chapel of Los Lentes to these old ruins?

A. Not over two or three hundred yards, I should think, without making a measurement of the place in question.

Q. That is all.

Mr. POPE. That is all.

SANTA FE, NEW MEXICO, *June 4th, 1897.*

I hereby certify that the above and foregoing six and a part pages contain a full, true, and correct transcript of all the testimony offered in evidence in the above-named cases.

W. J. MCPHERSON,  
*Official Stenographer C. P. L. C.*

25

PLAINTIFF'S EXHIBIT A, ARCHIVE 315.

[Translation.]

1.

1716

No. 449.

*To the governor and captain-general:*

I, Captain Antonio Gutierrez, a resident of the town of Albuquerque, and a native of this Kingdom, appear before you in due legal form, and I state that, being very much in need of lands on which to plant in order to support my family, and also to the end that my sheep may have room to scatter out, and there being an uncultivated and unoccupied tract of lands below Ysleta, apparently at a distance of two leagues, which formerly was held by Cristobal de Tapia, of which tract will you be pleased to make me a grant in the name of His Majesty in the same manner as it was held by said Cristobal de Tapia, and, is you be pleased to grant it to me, will you also order that the real possession be given me, designating to me boundaries and landmarks, in order that no prejudice may result to me in its possession?

Wherefore I ask and pray, with due humility, that you will be pleased to make me the grant that I ask for in the name of His Majesty, as one who represents his royal person, and I swear in the name of God our Lord, and by the sign of the Holy Cross, that this my petition is not in bad faith, and whatsoever is necessary, etc.

ANTONIO GUTIERREZ. [SCROLL.]

NOTE.—I ask and pray that the boundaries belonging to said tract be designated to me—on the north an arroyo with some cottonwood trees that comes down from the hills, on the south the pueblo of San Clemente, on the east the Del Norte River, and on the west the hills of the Puerco River; and I swear in due legal form that my petition is not in bad faith, and whatever is necessary.

ANTONIO GUTIERREZ. [SCROLL.]

*Presentation.*

At the town of Santa Fe on the fifth day of the month of November, in year one thousand seven hundred and sixteen, before me, Captain Felix Martinez, governor and captain-general of this Kingdom and provinces of New Mexico and castellan of its forces and garrisons for His Majesty, it was presented by the party therein named.

*Decree and grant.*

And, it having been examined by me, I treated it as properly presented in accordance with law, and, in view of the fact that it is His Majesty's

will that his lands should be settled and fortified, in his royal name I make to the petitioner the grant that he asks for, as he describes it and as Cristobal de Tapia formerly enjoyed it, without prejudice to a third party who may have a better right, and I command Captain Baltazar Romero that as soon as he be notified with this my decree he shall place the petitioner in real possession; and this shall serve him as a sufficient formal title for his protection, and when these proceedings shall have been had he will transmit this grant and possession to my civil and military secretary in order that he make a certified copy thereof, and that this original petition remain in the said archives; and in witness thereof I signed it with my civil and military secretary.

FELIX MARTINEZ. [SCROLL.]

Before me,

MIGUEL TENORIO DE ALBA, [SCROLL.]

*Civil and Military Secretary.*

26

PLAINTIFF'S EXHIBIT A, ARCHIVE 315.

[Spanish copy.]

*Senor Govor. y Captn. General:*

El Capitan Antonio Gutierrez, vecino de la villa de Albuquerque y originario de este rno., ante Vsa. paresco en la mejor forma que haya lugar en derecho y digo: Allándome mui desacomodado de tierras en que poder sembrar para mantener mis obligaciones, y juntamente para que mi ganado se explaye, y allándose yermo y despoblado un sitio de tierras abajo de la ysleta á distancia al pareser de dos leguas, que antiguamente lo poseia Xptoal de Tapia, el qual sitio se a de servir Vsa. haserme mez. de él segun y como lo posecia dicho Xptoal de Tapia, en nombre de su Magd. y juntamente mandará siendo servido de conserdarmelo el que se me dé la real posesion, señalándome linderos y mojoneros para que posindolo no me pueda pidar (?) perjuicio, por todo lo qual á Vsa. pido y suplico con todo rendimiento sea mui servido conserderme la merced que pido en nombre de su Magestad, como quien representa su divina imagen, y juro por Dios, nuestro Senor, y la senal de la santa cruz, esto mi escrito no ser de malicia y en lo nesecario, &a.

ANTONIO GUTIERRES.

OTROSI.—A Vsa. pido y suplico se me señalen los linderos que son pertecientes á dicho sitio, por el norte un arroyo de Alamos que baja de las lomas, por el sur el pueblo de San Clemente, por el oriente al rio del Norte, y por el poniente las lomas del rio Puercio, y juro en forma de derecho mi escrito no ser de malicia y en lo nesecario.

ANTONIO GUTIERRES.

PRESENTACION.—En la villa de Santa Fe, en cinco dias del mes de noviembre de mil setesientos y diez y seis años, ante mi el Capitan  
27 Don Felix Martinez, Governador y Capitan General de este reyno y provincia del Nuevo Mejico y castillano de sus fuerzas y presidios por su Magestad auto de merced, la presentó el contenido y por mi vista la hube por presentada en quanto ha lugar en derecho y en atencion á ser

la mente de su Magestad el que sus tierras se pueblen y fortalezcan, en su real nombre le coniedo la merced que el suplicante pide como lo expresa y antiguamente gosaba Xptobal de Tapia, sin perjuicio de terzero que mejor der'cho yenga y mando al Capitan Baltazar Romero que luego que sea requerido con este mi decreto, meta en posesion real al suplicante y este le sirva de bastante titulo en forma para su resguardo; y hechas las diligencias esta merced y posesion las remita á mi secretario de governacion y guerra para la testimonie; y quede este original en el dicho archibo; y para que conste, lo firmo con mi Secretario de Governacion y Guerra.

FELIX MARTINEZ.

Ante mi:

MIGUEL THENORIO DE ALBA,  
*Secretario de Gobernacion y Guerra.*

28

PLAINTIFF'S EXHIBIT B; ARC. 178.

Se sacó testimonio de estas escrituras el año de 1736 *as.* en 31 de Agosto.

Foxas 8, No. 319.

SANCHEZ. [RUBRIC.]

Sea notorio, y sepan quantos esta carta de benta rl. vieren, como compareció ante mi el Capp. Ju. Gonzales Bas, alcalde mayor y capp. á guerra de dha. villa, su jurisdiccion, y como digo compareció Dn. Diego Vazquez Borrego, á quien doy fe conosco, y dixo que dava, y con efecto dió en benta rl. á Dn. Nicolas de Chaves, un sitio de tierras para agostar ganados menores y mayores, y caballadas, con tierras de lavor de pan coxer, el qual huvo por benta rl. á los erederos Juachin Sedillo; con mas, dixo, que dava y dió junto con esta benta real en ella anexo, una donazion que al dho. Dn. Diego Vasques Borrego le yso Diego Padilla, en la qual consta la libre y genl. administracion para ella esara á su voluntad el qual sitio rno, y otro sitio abajo de la Ysleta que comunemente llaman San Martin, y como consta por sus ystrumentos y corren sus linderos por la parte del norte con tierras del Pueblo de la Ysleta, y por el poniente con el río Puerco, por el zur con la caza del rancho de Diego Padilla, entrando en esta escritura la referida donacion, y por el oriente con el rio del Norte; y como digo, dha. benta se la ase y da dho. Diego Vasques Borrego, al susodho. Dn. Nicolas de Chaves por el precio y quantia de seys cientos ps., los que confiesa dho. Borrego aber resibido á su contento y satisfacion, de que se da por contento, pagado, y satisfecho, sobre que para ello le entrega sus ystrumentos y renuncia su proprio fuero y domisilio, y las leyes de la

29 numerata pecunia, prueba y paga, y la de mancomunidad que abla sobre la mitad del justo precio que se las da libres de todo senso, tributo, y otra ypoteca para que las gose por sí, sus hijos erederos, y susesores, y que si acaso dho. sitio valga mas ó baler pueda, le ase gracia y donacion pura, mera, yrebocable, que el derecho llama yntervivos; sobre que retinsion todas las leyes que á su fabor pueda alegar, sobre que no le será puesto pleyto ni demanda alguna por el dho. Dn. Diego Borrego, sus hijos erederos, y susesores, y que si acaso se lo pusieren que no sean oydos en jycio ni fuera del, sobre que da poder quan bastante se



requiere á las justicias, apremien al cumplimiento de esta escritura como si fuera por sentencia definitiva de juez competente *de juez competente*, y que si algun pleyto se les offresieren sobre las dhas. tierras ó sitio, sacarara la cara para defenderlo asta dejarlo en quieta y pasifica posesion, y al saneamiento obliga su persona y bienes rayses y nubles abidos y por aber, sobre que renuncia la ley sit cumbenerit e jurisdicionem; así lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó conmigo, y dos testigos de mi asistencia auctuando ante mi como juez reseptor; en el presente papel porque el sellado no corre en estas partes; es fecho. en dies y seys de agto. de mil setesientos treynta y seys as.

DIEGO BASQUES BORREGO. [RUBRIC.]  
 JU. GONSALEZ BAS. [RUBRIC.]

Tto: PHILIP BARELA. [RUBRIC.]  
 Tto: YSIDRO SANCHEZ. [RUBRIC.]

30 Certified copy was made of these titles in the year of 1736 on August 31.

SANCHEZ. [RUBRIC.]

Let it be notorious and know all who this letter of real sale may see that there appeared before me Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, and as I say personally appeared Don Diego Vasquez Borrego, whom I certify I know, and he said: That he gave and in effect did give in real sale to Don Nicolas de Chaves a tract of land for the pasturage of small stock, neat cattle, and horses, and also aggricultural lands which he acquired by real sale from the heirs of Joaquin Sedillo, and he also said that he gave and did give together with this real sale and annexed thereto a donation which to the said Diego Basques Borrego was made by Diego Padilla, in which appeared the free and general administration in order that he might make use according to his will of the said tract, the one and the other situate below Isleta, commonly called San Martin, and as it appears by his instruments their boundaries are on the north lands of the pueblo of Isleta and on the west the Rio Puerco, on the south the house of the rancho of Diego Padilla, the said donation being included in this conveyance, and on the east the Rio Grande, and as I say the said Diego Vasques Borrego makes and gives the said sale to the said Don Nicolas de Chaves in the price and sum of six hundred dollars, which the said Borrego acknowledges to have received to his content and satisfaction, and he says he is contented, paid, and satisfied, and in regard to which he delivers his instruments of title and he renounces his own right and domicil and the laws of non numerata pecunia proof and payment, and that of things held in common which treats of the one-half of the just price; that he gives them free from all tax, tribute, and other burthen in order that he may enjoy them for himself, his children, heirs, and successors, and that in case the said tract

31 is worth more or may be worth more he makes him gift and donation of the same, pure, mere, irrevocable, which the law calls inter vivos; in which he renounces all the laws which may be in his favor, and no suit nor demand shall be brought against the same by

the said Don Diego Borrego, his children, heirs, and successors, and in case any should be brought that they may not be heard either in court or out of it; and he gives all power necessary to the justices of His Majesty in order that with all rigor of law they may require and compel him to the fulfillment of this instrument as if it were by definite decision of a competent judge; and if any suit be brought against the said lands or tract he will appear for the defense until he leaves him in quiet and peaceable possession; and for its warranty he pledges his person and his property, real and moveable, that which he now has and that which he may hereafter have, with regard to which he renounces the law sit cumbenerit and jurisdiccionen; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses acting before me by delegated authority (juez receptor) on the present paper because the stamped paper is not current in these parts; it is done on the sixteenth day of August of the year one thousand seven hundred and thirty-six.

DIEGO BASQUES BORREGO. [RUBRIC.]  
 JU. GONZALES BAS. [RUBRIC.]

Witness:

PHILIP BARELA. [RUBRIC.]

Witness:

ISIDRO SANCHEZ. [RUBRIC.]

32

*Carta de donacion.*

En esta villa de San Phel. de Albuquerque, en siete dias del mes de henero del año de mil setesientos y treynta y quatro, ante mi, el Capp. Ju. Gonzalez Baz, alcalde mayor y capp. á guerra de dha. villa y su jurisdiccion, compareció Diego Padilla, á quien doy fee conosco, quien delante de dos testigos dixo: que daña y tierra de el qual, como mas largamente consta, tubo, y pose en donacion que á su favor de dho. Padilla le otorgó con tierras de Joachin Sedillo; por el oriente, con el rio del Norte; por el sur con tierra de dho. Diego Padilla, sirviendo de señal en dho. lindero la mediania que ay de dos casas que tenia fabricadas dho. Padilla, proximas al lindero que tenia en la referida donacion; y por el poniente con el lindero que la escritura resa de todo el sitio que dho. Padilla tiene y como digo: de dhas. tierras le ase gracia y donacion, y traspasa su proprio fuero, domicilio, y señorío el sobre dho. Diego Padilla, con consentimiento de su esposa e hijos, en la persona de el susodho. Dn. Diego Borrego, sin mas yntereza que su yntima voluntad, para que las gose por si, sus hijos y erederos, aora y siempre, sobre que es dha. donacion pura, mera, perfecta, e ynrelocable, que el derecho llama yntervibos, y en que renuncia su proprio fuero, domicilio y besindad y las leyes de la numerata pequnia, prueba, y que se las da libres de todo senso, tributo, y otra yptoteca que fuera su voluntad, y que renuncia todas las leyes que á su favor puedan ablar, con la mayor de el derecho: sobre que no se le pondrá pleyto ni demanda, en ningun tiempo, por si, sus hijos erederos y susesores, y que si á caso se lo pusieren que no sean oydos en juycio ni fuera de el, y que da poder

bastante á las justicias de Su Magd. de qualesquiera parte, para  
 33 que con todo rigor le compelan y apremien al cumplimiento de  
 esta donacion, como si fuera por sentencia definitiva de juez com-  
 petente, pasada en cosa juzgada; y al cumplimiento y saneamiento obliga  
 su persona y bienes muebles, rayses, abidos y por aber, y renuncia todo  
 quanto á su fabor pueda alegar, y la ley si cunvenerit jurisdictionem.  
 Asi lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó  
 conmigo y dos testigos de mi asistencia, á falta de escribano publico y  
 real que no lo ay en este reyno.

JU. GONZALEZ BAS. [RUBRIC.]  
 DIEGO PADILLA. [RUBRIC.]

Tto.: ANTO. MONTOYA. [RUBRIC.]  
 Tto.: YSIDRO SANCHEZ. [RUBRIC.]

34

*Instrument of donation.*

[RUBRIC.]

In this villa of San Felipe de Albuquerque, on the seventh day of  
 January of the year one thousand seven hundred and thirty-four, before  
 me, Captain Juan Gonzalez Bas, alcalde, mayor and war captain of the  
 said town and its jurisdiction, personally appeared Diego Padilla, whom  
 I certify I know, who, in the presence of two witnesses, said that he  
 gave and did give freely to Don Borrego, to wit, a piece of land  
 which, as will hereinafter more fully appear, he had and possesses by  
 donation, which, in favor of the said Padilla, was made by Captain Anto-  
 nio Gutierrez, and its boundaries are: On the north, lands of Joaquin  
 Sedillo; on the east, the Rio Grande; on the south, land of the said  
 Diego Padilla, there serving as a landmark on the said boundary, the  
 midway line between the two houses which the said Padilla built near  
 the boundary line on the said donation, and on the west with the boundary  
 line called for in the title papers of the whole tract which the said Padilla  
 has; and as I say of the said lands, he makes gift and donation and con-  
 veyes his own right, domicil, and seignory, the said Diego Padilla, with the  
 consent of his wife and children, to the said Don Diego Borrego, without  
 any consideration other than his own will, in order that he may enjoy  
 them for himself, his children, and heirs now and forever, and the said  
 donation is pure, mere, perfect, and irrevocable, which the law calls  
 inter vivos, and which he renounces his own right, domicil, and resi-  
 dence and the laws of non numerata pecunia proof and payment, and he  
 gives them to him free of all tax, tribute, or other burthen, in order that  
 he may sell them, exchange them, and alienate them to any person he may  
 please, and that he renounces all the laws which may lie in his favor,  
 together with the general law of right; and against him no suit nor  
 demand shall ever be brought, either by himself or by his children,  
 heirs, and successors, and in case they should bring any, let them  
 35 not be heard either in court or out of it; and that he give suffi-  
 cient power to the justices of His Majesty of any place to compel  
 and oblige him with all rigor to the fulfillment of this donation as if it  
 were by definite decision of a competent judge given in a matter  
 adjudged; and to the fulfillment and warranty he binds his person and  
 the property, moveable and real, which he now has and that which he may

hereafter have; and he renounces all that which in his favor he might allege, and the law si cum venirit and jursdicionem. Thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this Kingdom.

JU. GONSALES BAS. [RUBRIC.]  
DIEGO PADILLA. [RUBRIC.]

Witness :

ANTO. MONTOYA. [RUBRIC.]

Witness :

YSIDRO SANCHEZ. [RUBRIC.]

36 *Carta de escritura de Venta Real á favor de Dn. Diego Borrego.*

[RUBRIC.]

En esta villa de San Phe. de Albuquerque, en once dias de el mes de enero de el año de mil setesientos y treynta y quatro años, ante mí, el Capp. Ju. Gonzalez Bas, alcalde mayor y capp. á guerra de dha. villa y su jurisdicion, compareció Antto. Sedillo, hijo lexítimo de Joaquin Sedillo y eredero forzoso de el dho., quien dijo: que daua y dió en benta real un sitio que está en el rio abajo, y abajo de el pueblo de la Ysleta, el qual sitio es para agostar ganados mayores, con mas tierras labradas y eriasas para poder laborear, y como digo da, y dió el dho. Antto. Sedillo en benta real el referido sitio con pareser y consentimiento de su madre y de otros ermanos quienes le amplearon facultad para ello, por aber muerto adeudado dho. Joachín y para remunerar la cantidad que deuia; y confiesa dho. Antonio Sedillo que dho. sitio lo ubo su padre, por merced, en nombre de su magd., parte y parte que ubo y poseya en benta real como consta por los cinco ystrumentos que entregó; y de el dho. sitio corren los linderos por el norte con el lindero de la legua del dho. pueblo de la Ysleta; por el oriente con el rio de el Norte; por el sur con un alamo *coate* que llaman algunos alamo de la culebra; y por el poniente con la sera de el rio Puerco; y dice: que dho. sitio se lo da á Dn. Diego Borrego, por el precio y quantia de dos sientos pesos, en reales, los que confiesa dho. Antto. Sedillo aber rescuído á su contento y satisfacion, de que se da por contento, pagado y

satisfecho, y que si mas bale, ó baler pueda, le ase gracia y donacion  
37 pura, mera, perfecta, y rebocable, que el derecho llama ynterbiuos; sobre que renuncia su propio fuero, donisilio y vesindad, y las leyes de la numerata pecunia, su propio fuero, y paga, y la de mancomunidad que abla sobre la mitad de el justo precio; y que se las da libres de todo senso, tributo, y otra ypoteca, para que las pueda bender, cambiar y enagenar como sullos que son, á la persona que fuere su boluntad; y que renuncia todas las leyes que puedan ablar á su favor, y que sobre ello no le pondrá pleyto ni demanda en ningun tiempo por sí, sus hijos erederos y susesores, y que si acaso se lo pusieren, que no sean oydos en en juycio ni fuera del, y q. da poder bastante á las justicias de su magestad, de qualesquiera parte que sea, para que con todo rigor le compelan y apremien al cumplimiento de esta escritura, como si fuera por sentencia difinitiva de jues competente, pasada en cosa

jugada; y al saneamiento de esta escritura obliga su persona, y bienes rayses, y muebles abidos y por aber, sobre que renuncia todo quanto á su favor pueda alegar y la ley si cum venerit jurisdictionem; así lo otorgó ante mi dho. alcalde mayor, de que doy fee; y lo firmó conmigo y dos testigos de mi asistencia, á falta de escribano publico y real, que no lo ay en este reyno.

ANTTO. SEDILLO. [RUBRICA.]  
JU. GONZALES BAS. [RUBRICA.]

Tto. YSIDRO SANCHEZ. [RUBRICA.]  
Tto. SALUADOR MARTINEZ. [RUBRICA.]

38 *Instrument of real sale of agricultural land to Don Diego Borrego.*

In this villa of San Felipe de Albuquerque, on the eleventh day of the month of January of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, personally appeared before me Antonio Sedillo, legitimate son of Joaquin Sedillo, and forced heir of the aforesaid, who said that he gave and did give in real sale a tract of land down the river and below the pueblo of Isleta, which tract is for the pasturage of large and small stock, with some broken lands and some cultivable and unbroken; and as I say, the said Antonio Sedillo gives and did give in real sale the said tract, after consultation and with the consent of his mother and his brothers and sisters, who gave him authority for the same because the said Joaquin died in debt, and in order to procure the amount which he owed; and the said Antonio Sedillo acknowledges that the said tract was acquired by his said father in part by grant in the name of His Majesty and in part acquired and held under real sale, as shown by five instruments which he delivered; and the boundaries of the said tract are: On the north the line of the league of the Isleta, pueblo; on the east the Rio Grande; on the south a twin alamo called by some the Culebra, and on the west the ridge of the Puercio River; and he says that the said tract he gives to Don Diego Borrego for the price and sum of two hundred dollars in money, which the said Antonio Sedillo to have received to his content and satisfaction, and he says he is contented, satisfied, and paid, and that if it is worth more or may be worth more he makes him gift and donation of it pure, mere, perfect, and irrevocable, which the law calls *inter vivos*, in which he renounces his own right, domicil', and residence, and the laws *non numerata pecunia*, proof and payment, and that of things held in common which treats of the one-half of the just price, and that he gives them to him free from all tax, tribute, or other burthen in order that he may sell, exchange,

39 and alienate them as his own, which they are, to whomsoever he pleases; and that he renounces all the laws which may be in his favor; and that no suit nor demand shall ever be brought against him either by himself, his children, heirs, or successors, and in case any shall be brought let them not be heard either in court or out of it; and he gives full power to the *justices* as His Majesty of whatsoever place, that they may with all rigor of law compel and require the fulfillment of this instrument as if it were by definite decision of a competent judge passed upon a thing adjudged; and to the warranty of this title

he pledges his person and property, real and personal, present and to come; in which he renounces all that may be alleged in his favor, and the law sicunvenirit ejurisdiccionen; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this kingdom.

ANTTO. SEDILLO. [RUBRIC.]  
 JU. GONZALES BAS. [RUBRIC.]

Witness':

SALVADOR MARTINES. [RUBRIC.]  
 ISIDRO SANCHEZ. [RUBRIC.]

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# PLAINTIFF'S EXHIBIT C.

[From Archive 371.]

Autos y ynbentario, divicion y particion de bienes, que quedaron por fallecimiento de Dn. Clemente Gutierrez, entre su muger y cinco hijos, concluidos en el año de 1785.

## Auto y principio de ynbentario.

En la Hacienda de San Ysidro del Pajarito, en treze dias del mes de mayo de mil setecientos ochenta y cinco años, Yo, el mencionado anterior Govor., pasé á la casa y morada de Da. Maria Apolonia. Baca, y estando precente, le leí y notifiqué el auto consecutivo á su peticion, sobre lo qe. le recibí juramento conforme á dro. para que manifestase todos los bienes raizes, muebles, derechos y acciones que poseia su difunto marido, Dn. Clemente Gutierrez, sin encubrir ni disimular ningunos; de lo que entendida, dixo: que está prompta á poner de manifesto los que consten y de que tenga noticia, que verificó invocando á Dios en la forma siguiente:

Pessos de Pta. Pessos de la Tierra.

Primeramente, el sitio de Sn. Ysidro del Pajarito, que consta con sus linderos de su respectiva escritura No. 1, e importa ..... 1, 200, 0  
 Yd., la cassa y morada qe. fue del difunto Dn. Clemente Gutierrez, constante de diez y ocho piezas, en qe. se incluyan la capilla y sacristia de la haxa., excluyéndose de abaluo cinco piezas pertenecientes á Dn. José Mariano de la Pena, e igual no. de Dn. Franco. Garcia, estimados las diez y seis primeras en ..... , 500, 0  
 Yd., un solar en el mismo sitio que corresponde á una cassa qe. vendió .....

Passa á la Bta. .... 1, 700, 0

Pessos de Pta. Pessos de la Tierra.

Por la Buelta ..... 1, 700, 0  
 Dn. Diego Antonio Baca como consta del recivo No. 2, abaluado dho. solar.. , 010, 0  
 Yd., un rancho en la birtientes de Navaho, cuyas aguas, tierras, pastos y linderos constan en sus respectivas quatro escrituras No. 3, pasadas por su abaluo, que es de ..... 5, 600, 0  
 Yd., un rancho abaxo de los linderos del Pueblo de la Ysleta llamados, e comunte. Sn. Clemente, Barrancos y los Pinos, de que se está en posesion aunque no hay documto. de sus linderos, estimado en ..... 1, 200, 0  
 Ydn., una aucion de tierras en el bosque de José Sanchez en .....



Proceedings and inventory, division and partition of the property which was left at the death of Don Clemente Gutierrez among his wife and five children, concluded in the year 1785.

*Order and beginning of the inventory.*

At the estate of San Ysidro del Pajarito, on the thirteenth day of the month of May of the year one thousand seven hundred and eighty-five, I, the said governor, proceeded to the house and dwelling of Dona Maria Apolonia Baca, and, she being present, I read and notified to her the order following her petition and administered to her the legal oath in order that she might make a statement of all the property, real, personal, rights and shares possessed by her defunct husband, Don Clemente Gutierrez, without concealing or withholding any of the same, and she having understood, said that she was ready to make a statement of that existing and of that of which she has information, which she verified, swearing by God, in the form following:

	Hard dollars.	Current dollars.
First. The tract of San Isidro del Pajarito, which is shown with its boundaries in its respective deed No. 1, and it is worth.....		1, 200. 0
Idem. The house and dwelling which belonged to the defunct Don Clemente Gutierrez, containing eighteen rooms, among which are included the		
43 chapel and the sacristy of the estate, excluding from the valuation five rooms belonging to Don Jose Mariano de la Pena and an equal number belonging to Don Franco Garcia, the first sixteen estimated at ...		, 500. 0
Idem. A house lot on the side tract corresponding to a house which was sold.		
To be carried forward.....		1, 700. 0

	Hard dollars.	Current dollars.
Brought forward.....		1, 700. 0
By Don Diego Antonio Baca, as appears by receipt No. 2, the said house lot valued at.....		, 010. 0
Idem. A ranch at the Virtientes de Navajo, the lands, waters, pastures, and boundaries of which are shown by its four deeds No. 3, respectively, valued at.....		5, 600. 0
Idem. A ranch below the boundary of the pueblo of Isleta, commonly called San Clemente, Barrancos, and Los Pinos, of which they have possession, although there is no title deed of its boundaries, estimated at.....		1, 200. 0
Idem. A share in lands of the bosque of Jose Sanchez, at.....		

44

[From Archive 371.]

Se le ha señalado á Da. Maria Apolonia Baca, etc.

	Pessos de Pta.	Pessos de la Tierra.
Se le adjudica la mitad del sitio de Sn. Ysidro de Pajarito por su respectivo abaluo.....		, 600. 0
La mitad de la casa de su morada en .....		, 250. 0
La mitad de vn solar en el mismo sitio en.....		, 005. 0
La mitad del Rancho de Navajo .....		2, 800. 0

	Pessos de Pta.	Pessos de la Tierra.
La mitad del Rancho de Sn. Clemente en.....		, 600. 0
Ydn. La mitad de las tierras de bosque de José Sanchez, que no tiene tasacion .....		



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[From Archive 371.]

There has been assigned to Dona Maria Apolonia Baca, etc.

Hard dollars. Current dollars.

There is adjudged to her one-half of the tract of San Isidro de Pajarito according to its respective valuation .....	, 600. 0
One-half of her dwelling house .....	, 250. 0
One-half of a house lot on the said tract .....	, 005. 0
One-half of the Rancho de Navajo .....	2, 800. 0
One-half of the Rancho of San Clemente .....	, 600. 0
Idem. One-half of the lands of the bosque de José Sanchez, which is not valued .....	

46

[From Archive 371.]

*Hijuela de Dn. Lorenzo Gutierrez.*

Hijuela de Dn. Lorenzo Gutierrez á quien como á hijo y heredero de su difunto padre, Dn. Clemente Gutierrez, en la mitad de los bienes raizes, muebles y dependencias que se contienen en el ynbentario le tocan y pertenecen, etc.

Pessos de Pta. R. G. Pessos de la Ta. R. G.

Se le adjudican la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito .....	, 120. 0, 0
La quinta parte de la mitad de vn solar en el mismo sitio .....	, 001. 0, 0
La quinta parte de la mitad del Rancho de Navajo en .....	, 560. 0, 0
La quinta parte de la mitad del Rancho de San Clemente en .....	, 120. 0, 0
La quinta parte de la mitad de las tierras del bosque de José Sanchez .....	

47

[From Archive 371.]

*Schedule of Don Lorenzo Gutierrez.*

Schedule of Don Lorenzo Gutierrez, to whom as a son and heir of his defunct father, Don Clemente Gutierrez, of the one-half of the property, real and personal, and debts due the estate contained in the inventory there belongs and pertains, etc., etc.

There is adjudged to him the fifth part of the one-half of the tract of San Isidro de Pajarito .....	, 120. 0. 0
The fifth part of one-half of the value of a house lot in the said tract .....	, 001. 0. 0
The fifth part of the one half of the Rancho de Navajo .....	, 560. 0. 0
The fifth part of one-half of the Rancho de San Clemente .....	, 120. 0. 0
The fifth part of one-half of the lands of the bosque de José Sanchez .....	

48

[From Archive 371.]

Hijuela de Da. Lorenzo Gutierrez, muger legítima de Dn. Franco. Anto. Garzia, etc.

Pessos de Pta. R. G. Pessos de la Ta. R. G.

Se la adjudica la quinta parte en la mitad del sitio de Sn. Ysidro de Pajarito .....	, 120. 0, 0
La quinta parte de la mitad del Rancho de Sn. Clemente en .....	, 120. 0, 0
La quinta parte de la mitad de las tierras del bosque de José Sanchez .....	

[From Archive 371.]

Schedule of Dona Lorenzo Gutierrez, legal wife of Don Francisco Antonio Garzia, etc., etc.

Hard dollars R. G. Current dollars R. G.

There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	120. 0. 0
The fifth part of the one-half of a house lot in the side tract .....	001. 0. 0
The fifth part of the one-half of the Rancho de Navajo .....	560. 0. 0
The fifth part of the one-half of the Rancho of San Clemente.....	120. 0. 0
The fifth part of the one-half of the lands of the bosque of José Sanchez.....	

[From Archive 371.]

Hijuela de Da. Maria Manuela de la Soledad Gutierrez, muger legitima de Dn. José Mariano de la Pena, etc.

Pessos de Pta. R. G. Pessos de la Ta. R. G.

Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito .....	130. 0. 0
La quinta parte de la mitad de vn solar en el mismo sitio en .....	001. 0. 0
La quinta parte de la mitad del Rancho del Navajo en .....	560. 0. 0
La quinta parte de la mitad del Rancho de Sn. Clemente .....	120. 0. 0
La quinta parte de la mitad de las tierras del bosque de José Sanchez .....	

[From Archive 371.]

Schedule of Dona Maria Manuela de la Soledad Gutierrez, legal wife of Don Mariano de la Pena, etc., etc.

Hard dollars, R. G. Current dollars, R. G.

There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	120. 0. 0
The fifth part of the one-half of a house lot in the said tract .....	001. 0. 0
The fifth part of the one-half of the Rancho de Navajo.....	560. 0. 0
The fifth part of the one-half of the Rancho de San Clemente .....	120. 0. 0
The fifth part of the one-half of the lands of the Bosque de Jose Sanchez.....	

[From Archive 371.]

Hijuela de Da. Maria Luise Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

Pessos de Pta. R. G. Pessos de Ta. R. G.

Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito .....	120. 0. 0
La quarta parte de la casa morada del difunto en su correspnte. Abaluo .....	125. 0. 0
La quinta parte de la mitad de vn solar en el mismo sitio de Pajarito.....	120. 0. 0
La quinta parte de la mitad del Rancho de Navajo .....	560. 0. 0
La quinta parte de la mitad del Rancho de Sn. Clemente.....	120. 0. 0
La quinta parte de la mitad de las tierras del Bosque de Jose Sanchez.....	

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[From Archive 371.]

Schedule of Dona Maria Luise Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars, R. G.	Current dollars, R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....		120.0.0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....		125.0.0
The fifth part of the one-half of a house lot in the said tract of Pajarito....		001.0.0
The fifth part of the one-half of the Rancho de Navajo.....		560.0.0
The fifth part of the one-half of the Rancho of San Clemente.....		120.0.0
The fifth part of the one-half of the lands of the Bosque de Jose Sanchez..		

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[From Archive 371.]

Hijuela de Da. Juana Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

	Pesos de Pta. R. G.	Pesos de la Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito en .....		120.0.0
La quarta parte de la casa Morada del difunto en su correspte. Abaluo.....		125.0.0
La quinta parte de la mitad de un solar en el mismo sitio de Pajarito.....		001.0.0
La quinta parte de la mitad del Rancho de Navajo en .....		560.0.0
La quinta parte de la mitad del Rancho de Sn. Clemente en .....		120.0.0
La quinta parte en la mitad del Rancho o Bosque de Jose Sanchez .....		

55

[From Archive 371.]

Schedule of Dona Juana Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars, R. G.	Current dollars, R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....		120.0.0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....		125.0.0
The fifth part of the one-half of a house lot in the said tract of Pajarito ..		001.0.0
The fifth part of the one-half of the Rancho de Navajo.....		560.0.0
The fifth part of the one-half of the Rancho of San Clemente.....		120.0.0
The fifth part of the one-half of the lands of the Bosque de Jose Sanchez..		

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## PLAINTIFFS' EXHIBIT D.

Equivalent to the third seal, for the year 1818.

(Signed)

FRANCISCO ORTIZ. [RUBRIC.]

In the town of San Felipe Neri de Albuquerque, on the twentieth day of the month of September, one thousand eight hundred and eighteen, before me, Don Josef Mariano de la Pena, senior judge thereof, acting by appointment, with attending witnesses, in the absence of all notaries, personally appeared before me Don Francisco Xavier Chavez, resident of the town of Los Padillas, and Don Jose Lorenzo de la Pena, of the town of Pajarito, both within this jurisdiction, Pena stating that by authority and consent of his sister Dona Mariana and his brother Jose Rafael de la Pena, having acquired, by the division between five brothers, from their grandmother and mother, Dona Maria Martina de la Soledad Gutierrez,

a piece of land in the grove called Los Pinas, he gives, and in effect did give, in legal sale, now and forever, unto the said Mr. Chavez and his heirs, the aforesaid piece of land, without stating the number of varas, not being as yet divided (or) measured, but being the succession of brothers, in which disvision he is in the second (degree) on whichever side said premises may be measured, which premises are bounded on the north by land of the pueblo of Isleta, on the south by lands known as those of Los Lentos, on the east by the hills, and on the west by the river del Norte, which inheritance he sold, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), free from all obligation and encumbrances whatever, in the price and sum of one hundred and fifty dollars, in sealed money of the royal mint, to his entire satisfaction, for which he renounces the exception of the nan numerata (not ready money), its proof and payment of the receipt, and the others which refer to them, at any time; that the said one hundred and fifty dollars are the legitimate value in which he sold said land, which he considers to be its just value, and not worth more, and if it should be worth more, he grants and donates the same to the purchaser unconditionally, completely, perfectly, and irrevocably, which is termed in law intervivas (during life and irrevocable), with the exhibition and renunciation of the laws relating to fraud and those of the royal ordinance, with all others made in the court of Alcala de Enareo; from now he abandons and (quitclaims) his brother heirs from all the right and interest held by him the said land, transferring the same to the purchaser and his heirs that he may use the same as legally his, acquired by a just title, which is this conveyance; and for the security and guaranty of this sale, the conveyer bound his person and property possessed, or which he may hereafter possess, with authority and submission to the royal justices of His Majesty, to compel and press him to its fulfillment with all the rigor of the law, as by execution in the case of judgment rendered in a case tried, consented to, and not appealed; he renounced his proper residence and vicinity, the law of cit combenerit and the general one in law. In witness whereof he has so executed (this conveyance), signing the same with me, the said senior justice, and those in my attendance, on the aforesaid day, with the further provision that if suit is instituted against him on account of said sale, he will defend the same until Chavez is left in peaceful and quiet possession, and when can do no more, he will return the same amount, and will further pay him the improvements he may have made; to all which I certify.

(Signed)

JOSE MARIANO DE LA PENA. [RUBRIC.]  
*For himself and for his sister Dona Mariana  
 and his brother Jose Rafael.*

(Signed)

JOSE LORENZO DE LA PENA. [RUBRIC.]

Attending witness:

SANTIAGO DE LA CRUZ BERTIA. [RUBRIC.]

Attending witness:

(Signed)

AMVROSIO ARMILLO. [RUBRIC.]

(Endorsed:) Surveyor-general's office, translator's department, Santa Fe, N. M., June 11, 1855. I certify the foregoing to be a translation of Document D, in claim No. 3, to the Bosque de los Pinos. Davis V. Whiting, translator.

## PLAINTIFF'S EXHIBIT E.

In the jurisdiction of San Augustin de la Isleta, on the 19th day of the month of October, one thousand eight hundred and twenty-one, before me, Don Manuel Ruvi, justice (alcalde) of the same, and before the secretary of the same in its corporation, personally appeared the urban captain of cavalry, Don Francisco Xavier Chavez, and Don Francisco Sarracino, representing the person of his mother, Dona Maria Luisa Gutierrez, in the name of and representing said lady, residence of this jurisdiction, the first of the town of Los Padillas and the second of Pajarito, Sarracino stating that, having acquired by inheritance in the division between fial brothers, as heirs of the deceased Don Clemente Gutierrez and Dona Apolonia Baca, the fifth part of the farm (rancho) of the grove known by the name of Los Pinas, within the boundaries and within its proper place, on the north side by the league of pueblo of Isleta, on the south residents of Valencia, on the east the plain, and on the west the river Del Norte, which he gave, and in effect did give by legal sale from now and forever unto said Mr. Chavez and his heirs in the price and sum of one hundred and fifty dollars in money to his satisfaction, free from all obligation or encumbrance whatsoever, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), by which he renounces the exception of the non numerata (not ready money), its proof and payment of the receipt; that the aforesaid one hundred and fifty dollars are the legitimate value in which he sold said inheritance, which he considers to be its just value, and not worth more; and if it should be worth anything more the remainder he grants and donates to the purchaser unconditionally, complete, perfect, and irrevocably, which is termed in law intervivos (during life and irrevocable), with the exhibition and renunciation of the laws relating to frauds, and tho'e of royal ordinances, with all others made in the court of Alcala de Enares; and from now said lady and heir heirs abandon all right and interest they have to said inheritance, transferring the same to the purchaser and his heirs, that he may use the same as legally his, acquired by a just title, which is this conveyance; and for the security and guaranty of this sale the conveyer bound the person and property possessed by said lady, with authority and submission to the royal justices of His Majesty for its fulfillment, and as her representative to compel and press him with all the rigor of the law, as by execution in the case of a judgment rendered in a case tried, consented to, and not appealed, he renounces his own residence and vicinity the law of cit combenerit and the general one in law. In witness whereof he has executed this (conveyance), signing the same with me, the aforesaid justice (alcalde), and on the present paper, for the want of stamped, the party interested binding himself to attach (thereto) a sheet of the proper seal. All before the secretary. To which I certify.

(Signed)

MANUEL RUVI DE CELIS. [RUBRIC.]

By direction of madam, my mother, Dona Maria Lu Luisa Gutierrez.

(Signed)

FRANCISCO SARRACINO. [RUBRIC.]

(Signed)

JOSE MARIANO DE LA PENA, [RUBRIC.]

Secretary.

SURVEYOR-GENERAL' OFFICE,  
TRANSLATOR'S DEPARTMENT,  
*Santa Fe, New Mexico, July 14, 1855.*

I certify the foregoing to be a translation of Document E, in Claim No. 3, to the Bosque de los Pinoas.

DAVID V. WHITING, *Translator.*

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PLAINTIFF'S EXHIBIT F.

The citizen, Jose Antonio Chavez, constitutional justice (alcalde) of Isleta, ex political chief of this Territory, &c., &c.

In the town of San Andres de los Padillas, on the 27th of December, 1839, before me, the aforesaid constitutional justice (alcalde) of Isleta, and those in my attendance, personally appeared Messrs. Don Juan Nepomoceno Gutierrez and Dona Apolonia Gutierrez, as agent for Dona Maria Alvarez del Castillo, and the first parties stated that their father, Don Lorenzo Gutierrez, had sold to Don Francisco Xavier Chavez, deceased, the portion to which they were entitled to in the grove called "de Los Pinos," as well as the portion to which Dona Lorenzo Gutierrez was entitled to; that said portions were delivered to said Don Francisco by their father aforesaid, and that the said Don Francisco remained in the quiet, peaceable possession of the property during the lifetime of their father without having any claim set up against him, and that they do not know if any document was executed in his favor; and as the said document does not appear they give him the present certificate in order that no claim may be set up against his possession by their children, heirs, or successors, and at the request of Don Mariano Chavez they give this certificate, which they sign with me and my attending witnesses on this paper, there being none of the proper seal, on the day, month, and year aforesaid, *yo* which I certify.

(Signed)

JOSE ANTONIO CHAVEZ. [RUBRIC.]

(Signed)

JUAN NEP'O GUTIERREZ. [RUBRIC.]

Attending:

(Signed)

IGNACIO ORTIZ. [RUBRIC.]

*For my mother, Dona Palonia Gutierrez.*

Attending:

(Signed)

JUAN OTERO. [RUBRIC.]

(Signed)

JUAQUIN BAYAR. [RUBRIC.]

SURVEYOR-GENERAL'S OFFICE,  
TRANSLATOR'S DEPARTMENT,  
*Santa Fe, N. M., June 11th, 1855.*

I certify the within to be a translation of Document K, in Claim No. 3, to the "Bosque de los Pinoas."

DAVID V. WHITING, *Translator.*

59

PLAINTIFF'S EXHIBIT G.

Dn. Lorenzo Gutierrez, capitan de milicias, comandante en campaña, alcalde de segunda eleccion de la Biya de Alvirquerque, su juridicion y frontera, &c.

Por quanto se me han presentado los yjos principales del pueblo de Sn. Agustin de la Ysleta, en sollicitu' de documento de escritura sobre las tierras que del lindero de dicho pueblo al de los Lentes, de sur á norte, se le vendieron á dicho pueblo por mi antecesor, Dn. Mariano de la Peña, de la casa de mi manexo de Sra. mi Madre Dña. Josefa Polonia Baca, de culla venta para la costancia en poder del alcalde de primera eleccion desta dicha jurisdiccion, Dn. Manl. de Artega, el que por hayarse de grave enfermeda no se le puede esixir el espresado documento hasta su mexoria o fallestimiento, y que siendo regular lo tenga depositado en el archivo que há su cargo está, para escusar las rrepetidas ystancias de los espresados yjos, y costándome ser sierta la compra les doi el presente, que firmo para resguardo, firmándolo pa. la devida costancia con dos de mi asistencia, en este de Pajarito, á tres dias del mes de mayo de mil ochosientos ocho años.

LORENZO GUTIERREZ. [RÚBRICA.]

Asa. : AGUSTIN DE LA PEÑA. [RÚBRICA.]  
 Asa. : MANL. RUVL. [RÚBRICA.]

60

PLAINTIFF'S EXHIBIT G.

[Translation.]

Don Lorenzo Gutierrez, captain of militia, commandant in the field, alcalde of second election of the town of Albuquerque, its jurisdiction and frontier, etc., etc.

Whereas the principal men of the pueblo of San Agustin de la Isleta have come before me asking for a deed of conveyance for the lands which, from the boundary of the said pueblo to that of Los Lentes, from south to north, were sold to the said pueblo by my predecessor, Don Mariano de la Peña, from the estate of my mother, Doña Josefa Polonia Baca, of which I am the administrator, of which sale the documentary evidence is in the possession of the alcalde of first election of this said jurisdiction, Don Manuel de Artega, from whom, he being seriously ill, it can not be obtained until he gets better or dies, and it being probable that it is deposited in the archives under his charge, in order to avoid the repeated petitions of the said men, and knowing that the purchase was really made, I give them the present, which I sign for their security, signing it in order that it may so duly appear, with two assisting witnesses, in this place of Pajarito, on the third day of the month of May of the year one thousand eight hundred and eight.

LORENZO GUTIERRES. [RUBRIC.]

Assisting witness:

AGUSTIN DE LA PEÑA. [RUBRIC.]

Assisting witness:

MANL. RUVL. [RUBRIC.]

61

PLAINTIFF'S EXHIBIT H.

YSLETA, y Junio de 1826.

Sr. Gr. Dn. ANTO. NARVONA,

Sor., en virtud de havérseme presentado los hombres mallores y prinsi-pales deste pueblo de Sr. S. Agustin de la Ysleta, sobre qe. Dn. Anto.



José Padilla está fabricando en un sitio de tierra qu. el Pueblo compró, á la casa de Dn. Clemente Gutierrez, como consta por un documento qu. halla en ntro. poder, otorgado por Dn. Lorenzo Gutierrez, dha. venta fue echa por Dn. Mariano de la Peña; en dha. compra no hubo mas comprendidos qu. alludaron con su dinero, qu. fueron Blas Lente, Nicolas Olgin, y Pedro Lente; este dho. Anto. José Padilla no contribulló con nada, solo se funda acreedor porque para completar la cantidad del dinero qu. teniamos de entregar por dha. tierra, vendimos en la otra vanda, tambien comprada á unos Señores Padilla, como consta por la escritura qu. para en ntro. poder; y disen los viejos deste pueblo qu. es sierto qu. en esta compra contribulló con un tanto, Roque Lusero, abuelo de la muger de dho. Anto. José Padilla, y qu. no se le niega qu. sea acreedor á dho. sitio, pero qu. en donde le toque como convidado; y qu. si en esta tierra desta vanda, presenta algun documento qu. diga qu. alludó con algo, tambien se le dará como se le dió á Blas Lente, á Nicolas Olgin, y á Pedro Lente, pero qu. adonde el se a puesto, qu. es casi al medio de la tierra, de ningun modo se puede, pues dha. tierra se compró para abrebaderos de ntros. animales, y regularmente haf bajan bacas, buelles, y cavallada á abrear, y presisamente an de dañar, de donde vienen las riñas y cuestiones, y para evitar esto no queremos qu. se nos ponga ay, pues si se considera acreedor por haver vendido en donde el tiene ausion por parte de su muger, qu. aun quedó mucha tierra del sitio del otra banda de donde darle lo qu. le corresponda, pues no se le niega el derecho.

En virtud de todo lo expuesto, pasamos á la fuente de la prudencia de V. S. con la venia de ntro. ale. constitucional, y rendidamente suplicamos se sirva darnos el consuelo de atendernos, segun llevamos dicho, con lo que V. S. juzge ser de justicia con lo que rresiviremos mersed, y juremos no ser de malisia esta ntra. petision, si lo nesesario &c.

MANUEL LUSERO. [A CROSS.]  
Ale. de Barrio.

62

## PLAINTIFF'S EXHIBIT H.

[Translation.]

ISLETA, June 14, 1826.

To the Governor, Don ANTONIO NARBONA.

SIR: The principal men of this pueblo of San Augustine of Isleta have come before me to say that Don Antonio José Padilla is building on a tract of land which the pueblo purchased from the house of Don Clemente Gutierrez, as will appear from a document which is in our possession executed by Don Lorenzo Gutierrez, the said sale having been made by Don Mariano de la Peña, in which purchase there were included only those who aided with their money, and these were Blas Lente, Nicolas Olgin, and Pedro Lente. This said Antonio José Padilla did not contribute anything, and he bases his claim solely on the fact that in order to complete the sum of money which we had to pay for the land we sold on the other side of the river [land] also purchased from certain Messrs. Padilla, a' appears by the title paper which we hold, and the old men of the pueblo say that it is true that for this purchase a certain amount was contributed by Roque Lusero, grandfather of the wife of the said Antonio José Padilla, and it is not denied that he has an interest in the said tract,

but at such a point as it may be proper for him as one invited, and if in the tract on this side he presents any document that will show that he assisted with anything there will also be given to him as was given to Blas Lente, to Nicolas Olgin, and to Pedro Lente; but where he has located, which is almost in the middle of the land, can not be allowed by any means, since the said land was purchased for watering places for our animals, and there will pass there cows, oxen, and horses, and they will certainly cause damage, whence will arise quarrels and questions, and to avoid these we do not want him to locate there, and if he thinks that he has an interest because of a sale having been made in the part where he has a share on account of the interest of his wife, there was a great deal left of the tract on the other side from which there may be given him that to which he may be entitled, as his right is not denied.

In virtue of all of that which we have set forth we apply to the fountain of the prudence of your honor with the permission of our constitutional alcalde, and we humbly pray that you will deign to give us the consolation of your attention in accordance with that which we have said, with your honor's decision as to what may be just in the matter in which we will receive grace, and we swear, etc.

MANUEL LUSERO. [A CROSS.]  
*Alcalde of the Ward.*

63

## PLAINTIFF'S EXHIBIT I.

Don José Antonio Chaves Duran, the. de las milicias urbanas y Alce. Mayor del Pueblo de la Ysleta y sus partidos, &c.:

Porquanto se me han presentado los hijos principales del Pueblo de Sor. Sn. Agustin de la Ysleta en solisitud de que se les midiera su sitio del lado del sur la que lindan con Los Lentes, y pasé á dho. sitio y mandé llamar á los principales de Los Lentes, y juntos los hijos del Pueblo de la Ysleta y Los Lentes, y medí dho. sitio y entrego á los del Pueblo lo que justamente era sullo, y á Los Lentes lo mismo, y quedaron vnos y otros muy contentos y conformes con la medida que se hizo y que en ningun tienpo no pondrán alegato ni vnos ni otros por estar echo el reparto fiel y legal, y que si acaso alguno pusiere algun alegato, que no sea hoido en juicio, y mandé pucieran sus mojoneras pa. perpetua memoria y firmé este documento para la devida constancia, con dos testigos de mi asistencia en este Pueblo de la Ysleta, á dos de junio de mil ochosientos beinydos años, y doy fee.

JOSÉ ANTO. CHAVS. DURAN. [RÚBRICA.]

Assaa.:

MANL. YTURRIETA. [A CROSS.]

SSaa.

PEDRO YTURVIETA. [RÚBRICA.]

64

## PLAINTIFF'S EXHIBIT I.

[Translation.]

Don José Antonio Chaves Duran, lieutenant of urban militia and alcalde mayor of the Pueblo de la Isleta and its districts, etc., etc.:

Whereas the principal men of the Pueblo de San Agustin de la Isleta have come before me asking that I measure for them their tract on the

south side, which lines with Los Lentos, and I proceeded to the said tract, and I ordered the principals of Los Lentos to appear, and the men of the Pueblo de la Isleta and of Los Lentos being assembled, I measured the said tract and I deliver' to those of the pueblo that which was justly theirs, and to Los Lentos the same, and both were well contented and satisfied with the measure which had been made; and they shall not at any time, neither the one nor the other, bring any suit, for the reason that the partition was made faithfully and legally, and in case anyone should bring suit let him not be heard in court; and I ordered that they set up their landmarks in perpetual evidence, and I signed this document in order that it might so duly appear, with two assisting witnesses, in this Pueblo de la Isleta, on the second of June, in the year one thousand eight hundred and twenty-two, and I certify.

F. JOSE ANTO. CHAVES DURAN. [RUBRIC.]

Assisting witness:

MANL. YTURRIETA. [A CROSS.]

Assisting witness:

PEDRO YTURVIETA. [RUBRIC.]

65

PLAINTIFF'S EXHIBIT J.

[Original Title-Papers.]

*Mrzd. del sitio de San Clemente, echa á Ana de Sandoval y Manzanares.  
Sor. Gov. y Capn. Gel.:*

Ana de Sandoval y Manzanares, becina de este reino de la Nueva Mexico, puesta á las plantas de Vrsa. pareasco en la mas bastante forma de derecho que aylla lugar y á el mio combenga y digo, señor, que, por cuanto el Marques de la Nava de Brasinós, que Dios haya en gloria, gobernador y capitán general que fué deste dho. reino, nos conduxo á él, año de noventa y dos, para su poblason, en culla atencion, y en nombre del rey mi Señor (Dios le gue.) nos prometió de dar á cada uno de los becinos naturales deste dicho reino, que entraron á la poblason y pasificacion del, de darnos los sitios que de tierras y de labores y criansas de ganados y caballadas que dejamos perdidas el año de ochenta por su inco'nita sublemacion, en culla virtud de habernos restituido á dicho reino, esperimentando en él innumerables trabajos, y realmente allarme pobre y viuda de Blas de la Candelaria, que Dios aya lla, y cargada de hijos, motivo digno de suplicar á Vsia. se sirba de darme, en nombre de su Magestad (Dios le gue.) un sitio de tierras titulado San Clemente, el cual hube de erencia de mi padre, que Dios aylla, Mateo de Sandoval y Manzanares, que me dexó la merced de dho. rancho con linderos que son los siguientes: Por la parte del norte las tierras de Cristobal de Tapia, y por la parte del sur, con tierras y paderes de la casa de Tome Domingues; por la parte del oriente con el rio del Norte, por ~~la~~ del poniente el rio Puerco, lo cual á Veia. pido y suplico, con el mas profundo rendimiento, se ha de servir de mandar á la persona que mas fuere de su agrado, me dé posecion real de dho. sitio, con la nueva merced del para poder yo y mis hijos, nietos, erederos y sucesores, usar de dicho sitio, y gosarlo libremente; y juro en devida forma lo nesecario, etca.

ANA DE SANDOVAL Y MANZANARES.

## PRESEN'N.

En la villa de Santa Fe, en trese dias del mes de julio del año de mil setecientos y dies y seis, ante mi, el Capn. Don Phelix Martinez, que lo soi vitalicio desta real presidio de la villa de Santa Fee, govr. y capitan, genl. de este reino, y castellano de sus fuersas y precidios, por su Magd., la presento la contenida y por mi vista la hube por presentada en cuanto á lugar en dro. y atendiendo á lo justo de su pedimento y ser segun su relacion dhas. tierras de su padre y haberlas despoblado por la subleba- zion del año de ochenta.

## AUTO.

Le concedo la merced que pide en nombre de su Magd. por la susodi-  
 cha, sus hijos, herederos y subseores, para que la gose y posee  
 66 entendiéndose, sin perjuicio de tercero que mejor dro. tenga, y  
 ha de poblarse dentro de seis meses por atender á la mucha ocu-  
 pacion del tiempo, y mando al Cpn. Antonio Gutierrez le dé la real  
 posesion en nombre de Su Magd., con todas las seremonias de dro., y  
 este auto le sirva de bastante titulo; y luego que dé dha. posesion que se  
 debuelva este original á este archivo para que se saque testimonio; y para  
 que conste lo firmé con mi secretario de gobn. y guerra en dicho dia ut  
 supra.

PHELIX MARTINEZ.

Ante mi,

MIGUEL THENORIO DE ALVA,  
*Serio. de Govn. y Guerra.*

En esta villa de San Felipe de Albuquerque, en beinte y tres dias del  
 mes de julio de mil setecientos y dies y seis dias, io, el Capn. Antonio  
 Gutierrez, alcalde maior y capitan á guerra de la dicha billa y su juris-  
 dicion, en cumplimiento del auto arriba probeido por el señor gor. y capitan  
 general Dn. Felix Martinez, fuí al dho. sitio y tierras que dho. auto me  
 manda, y en él, dí la real posesion en nombre de su Magd., Dios le ge., á  
 Felix de la Candelaria, en cabeza de su madre, Ana de Manzanares y  
 Sandoval, en forma de derecho, con las seremonias acostumbradas que el  
 derecho dispone, pasiandolo de la mano; quien arancó sacate, tiró piedras  
 y gritó, y se la dí por los mismos linderos que señala en su peticion, como  
 asi mismo corren sus linderos: Por el oriente con el rio del Norte, por  
 el poniente con el rio Puerco, por el sur con la casa de Tome Domin-  
 gues, por el norte con una ruina que está poco mas arriba del po. de San  
 Clemente; i en los dichos linderos mandé poner mojoneras, habiéndolos  
 primero reconocido; y lo firmé con dos testigos de mi asistencia, y para  
 67 que asi conste lo firmé yo, dho. alcalde maior, capitan á guerra, con  
 dos testigos de mi asistencia en dicho dia, mes y año, ut supra.

Ante mi como juez receptor.

ANTONIO GUTIERRES.

Testigo de asistencia:

ANTON. DE CHABES.

Testigo de asistencia:

BALTAZAR ROMERO.

[Translation of title papers.]

*Grant of the tract of San Clemente made to Ana de Sandoval y Manzanares.**To the governor and captain-general:*

I, Ana de Sandoval y Manzanares, a resident of this Province of New Mexico, placed at the feet of your excellency, appear in due legal form and state, sir, that when the Marquis de la Navade Brasinas, whom may God have in glory, who was governor and captain-general of the said province, brought us hither in the year ninety-two for its settlement, in the view of which, and in the name of my lord, the King, God preserve him, promise to give to each one of the native citizens of this province who might come to settle and pacify the same, the tract of land and field is and stock raising that we abandoned in the year eighty on account of the powerful insurrection. By virtue of having been restored to said province, suffering thereby a great many hardships, and finding myself really poor and a widow of Blas de la Candelaria, deceased, and burdened with children, a good reason to supplicate your excellency that you grant me, in the name of His Majesty, whom may God preserve, a tract of land called San Clemente, which I inherited from my father, deceased, Mateo de Sandoval y Manzanares, who left me the grant of San Clemente, said rancho, with its boundaries, as follows: On the northern part with the lands of Cristobal de Tapia, and on the southern part with the lands and walls of the house of Tome Domingues, on the eastern part with the Del Norte River, on the part of the west with the Rio Puerco; which I ask of your excellency, and pray with the profoundest respect, that you may send one person whom it may be your pleasure, that the same may place me in the royal possession of said tract, together with the new grant, that I, my children, grandchildren, and heirs, and successors may use and enjoy the same; and I declare in due form whatever may be necessary.

69

ANA DE SANDONAL Y MANZANARES.

## PRESENTATION.

In the city of Santa Fe, on the thirteenth day of the month of July, in the year seventeen hundred and sixteen, before me, Don Phelix Martinez, captain for life of this royal garrison of the city of Santa Fe, governor and captain-general of this province and castellan of its forces and garrison for His Majesty, the petition was presented by the petitioner. I treated the same as before me in due legal form, and in view of the justness of her petition and said lands belonging to her father, according to her petition, and the same having been abandoned by him, on account of the insurrection of the year eighty.

## BEQUEATH.

I concede to her the grant she asks in the name of His Majesty, to the aforesaid, her children, heirs, and successors, that she may enjoy the same; provided that it be without injury to any third party who may have a better right, and she must settle the said grant within six months,

on account of the many occupations of the time, and I hereby command Captain Antonio Gutierrez to place her in royal possession in the name of His Majesty, in all due form legal, and that this decree shall be for her a sufficient title; and as soo' as said possession is given her, that this original may be returned to this office that duplicate may be made; and that it may so appear, I have signed with my secretary of goverment and war on said day as above.

PHILIX MARTINES.

Before me,

MIGUEL TEENORIO DE ALVA,  
*Secretary of Government and War.*

70 In this city of San Felipe de Albuquerque, on the twenty-third day of the month of July, seventeen hundred and sixteen, I, Captain Antonio Gutierrez, chief alcalde and war captain of the sai' city and its jurisdiction, in compliance to the decree above named by his excellency the governor and captain-general, Don Phelix Martines, I went to the said tract and land that in said decree I am com'anded, and there I gave royal possession, in the name of His Majesty, whom may God preserve, to Felix de la Candelaria, in the nam' of his mother, Ana de Manzanares y Sandoval, in legal form, with the accustomed ceremonies that the law prescribes, leading him by the hand, and he tore up grass, threw stones, and shouted, and I now give said possession with the boundaries that are designated in her petition, and therefore the same are its boundaries: On the east by the Rio del Norte, on the west by the Rio Puerco, on the south by the house of Tome Domingues, and on the north by a ruin that is a little above the pueblo of San Clemente; and in the said boundaries I ordered monuds to be made, having first examined them, and I signed it with two attending witnesses; and that it may so appear I have signed, I, the said chief and war captain, with two attendin' witnesses, on the said day, month, and year as above.

ANTONIO GUTIERRES.

Attending witness:

ANTONIO CHABES.

Attending witness:

BALTAZAR ROMERO.

71 PLAINTIFF'S EXHIBIT K.—DECREE IN ANA DE MANZANAREZ CASE.

In the Court of Private Land Claims, sitting in the Territory of New Mexico.

J. FRANCISCO CHAVES AND SOLOMON LUNA }  
vs. } No. 64.  
UNITED STATES. }

This cause having hereto're come on for hearing upon the pleadings and exhibits on file, and upon proofs taken in open couet, as well on behalf of defendants as on behalf of petitioners, full legal proof having been taken and counsel having been heard for said parties, and the petition



herein having been sustained by satisfactory proofs, the court, being now sufficiently advised in the premises, makes the following findings of fact:

1. That on the thirteenth day of July, in the year 1716, Ana de Sandoval y Manzanares, the widow of Blas de la Candelaria, presented to the then governor and captain-general of New Mexico, Don Phelix Martinez, *har* petition, praying that he grant her a piece of land called San Clemente, and setting forth the boundaries of said land as being on the north the lands of Christobal de Tapia, on the south the lands and walls of the house of Tome Dominguez, on the east the Rio del Norte, and on the west the Rio Puerco; that thereupon the said governor and captain-general made to her the grant which she asked, and com'anded the Captain Antonio Gutierrez to place her in possession with all the ceremonies of law; and that on the 23rd day of July, 1716, the said Captain Antonio Gutierrez, in pursuance of the com'and aforesaid of the governor, delivered possession of said land to Filix de la Candelaria as the representative of his mother, the said Ana de Sandoval y Manzanares, with the boundaries designated in her said petition, specifying the same to be, on the east the Rio del Norte, on the west the Rio Puerco,

on the south the house of Tome Domingues, and on the north a ruin, which is a little above the pœblo of San Clemente.

2. That the Rio del Norte, which constitutes the eastern boundary of said land, did not at the time of the making of said grant run in the same channel where it now does, but at some distance to the eastward of its present bed, and that the old river bed is the eastern boundary of said land, a portion or portions thereof lying east of the present river.

3. That the land included in said grant has been in the possession of said grantee, *har* heirs and legal representatives, continuo'ly from the year 1716 down to the present time, and that at least one of the petitioners in this cause, Solomon Luna, has succeeded in part to the rights of said original grantee, by inheritance for an ancestor, Domingo de Luna, who purchased portions of said land from heirs of the original grantee prior to the year 1750.

The court finds, as matter of law, that by reason of the facts hereinbefore set forth, a title to all of the land included within the boundaries aforesaid was vested in the said Ana de Sandoval y Manzanares, which title was complete and perfect at the date when the United States acquired sovereignty over the country now embraced within the Territory of New Mexico, within which said grant is situated, and that the petitioners herein are entitled to have the same confirmed to the heirs and legal representatives of the said Ana de Sandoval y Manzanares.

The court hereby specifies that the said land is located within the county of Valencia, in the Territory of New Mexico; that it is bounded on the north by an east and west line running through the point where the public road from Los Lentes to Ysleta crosses a lateral irrigating ditch running in an easterly direction from the main ditch or Acequia

Madre, which lies to the west of said road, which point is about three-quarters of a mile north of the chapel or church at Los Lentes, and a short distance above a road which branches off from said first-mentioned road and runs in a westerly direction toward the hills; on the east by the old river bed of the Rio Grande del Norte; on



the south by the northern boundary line of the Nicolas Duran de Chaves grant, as heretofore fixed by a decree of this court and as shown by the survey of said grant made in pursuance of said decree and approved by this court on the 29th day of May, A. D. 1895, and on the west by the Rio Puerco, and that the estimated area of said land is about thirty-seven thousand acres.

It is therefor ordered and adjudged and decreed by the court that the claim for the land embraced within said grant as hereinbefore described and specified be, and the same hereby is, confirmed to the heirs and legal representatives of Ana de Sandoval y Manzanares, but this confirmation does not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same.

It is declared by the court that the confirmation in this decree contained *in* is made under Title XII of Book IV of the Recopilacion de Leyes de los Reynos de las Indias, the royal decree of the King of Spain of October 15, 1754, and the law of nations.

September 4, 1896.

HENRY C. SLUSS,  
*Associate Justice.*

(Here follows map, marked p. 74.)

75 And be it further remembered that thereafter, to wit, on the 2nd day of June, A. D. 1897, the court rendered its decision in the words and figures following, to wit:

76 In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA	}	No. 274.
<i>vs.</i> THE UNITED STATES.		

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA	}	No. 275.
<i>vs.</i> THE UNITED STATES.		

These two cases having heretofore come on for hearing together upon the pleadings and exhibits on file and upon the proofs taken in open court upon behalf of the petitioners, and counsel having been heard as well on behalf of defendant as on behalf of the petitioners, the court, being now sufficiently advised in the premises, finds that the petitions, and all of the material allegations of fact therein contained, have been sustained by satisfactory proofs, and the court makes the following special findings of facts:

1. On November 5, 1716, the Spanish governor of New Mexico made to Antonio Gutierrez a grant of a tract of land described as bounded on the north by an arroyo with some cottonwood trees that comes down from the hills, on the south by the Pueblo of San Clemente, on the east the Rio del Norte, on the west the hills of the Puerco River, which boundary calls are well-known objects, except that on the north, of the location of which there is no evidence.

2. At some time prior to the year 1734 a grant was made to Joaquin Sedillo, and he had also acquired and had in possession some additional land, the whole being bounded on the north by the line of the

league of the Pueblo of Isleta, on the south by a twin alamo, sometimes called the Alamo de la Culebra, which boundary on the south was identical with the northern boundary of the above-mentioned grant to Antonio Gutierrez; on the east by the Río del Norte, and on the west by the ceja of the Río Puerco, these boundary calls being well-known objects, except that on the south, of the location of which there is no evidence.

3. In the year 1785 one Clemente Gutierrez died in possession of, and owning, the whole of the land of the said Antonio Gutierrez and Joaquin Sedillo, which was listed in the inventory of his estate made by his widow as "the rancho commonly called San Clemente, Barrancas, and Los Pinos."

4. At some time prior to the 3rd of May, 1808, the pueblo of Isleta had acquired the title of Clemente Gutierrez to all of the said land lying on the west side of the present river bed of the Río Grande del Norte and had entered into possession of the same and has held such possession down to the present time, the extent of the said land so acquired by said pueblo being from the boundary of the grant of the pueblo to the boundary of the lands of Los Lentos.

5. By a number of different deeds from the children and heirs of Clemente Gutierrez, beginning in the year 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to so much of the said lands as lie to the east of the present river bed of the Río Grande del Norte, which portion of said lands is known as the Bosque de los Pinos, the northern boundary thereof being the line of the grant to the pueblo of Isleta, and the southern boundary being the line of the lands of Los Lentos.

6. The northern boundary of the said lands of Los Lentos has been ascertained and fixed by this court in its decree of confirmation in the case of J. Francisco Chavez and Solomon Luna vs. The United States, which is numbered 64 on the docket of this court as being the northern boundary of the land the claim for which was confirmed in said decree.

7. After the making of the original grants the Río Grande del Norte formed a new channel west of what was subsequently known as the Bosque de los Pinos, leaving its former river bed at a considerable distance east of the new one, and that portion of the land in question lying between the old and new river beds has since been known as the Bosque de los Pinos and is that which was acquired by Francisco Xavier Chavez.

8. The petitioner, J. Francisco Chavez, is a grandson of the said Francisco Xavier Chavez and has inherited his title to the Bosque de los Pinos, which has been continuously in the possession of the said Francisco Xavier Chavez and his descendants since his purchase.

9. Clemente Gutierrez, and those deriving title under him, have been in the possession of the said land from some time prior to the distribution of his estate in 1785 down to the present time, at all times exercising dominion over it.

The court therefore finds, as matter of law, that the title held by Francisco Xavier Chavez and his descendants to that portion of the said lands lying between the old and present river beds of the Río Grande del Norte, commonly known as the Bosque de los Pinos, and the title

held by the pueblo of Isleta to that portion of the said lands lying west of the present river bed of the Rio Grande del Norte, were complete and perfect titles at the date when the United States acquired sovereignty over the country now embraced within the Territory of New Mexico and within which said lands are situate; and that the said J. Francisco Chavez and the pueblo of Isleta are entitled to a decree of confirmation of their respective claims; and that, under the special circumstances of the case, but one decree of confirmation ought to be entered for the whole of the land lying between the grant to the pueblo of Isleta and the northern line of the grant to Ana de Sandoval y Manzanares, and that the said two cases are to be taken and considered as consolidated for the purpose of such confirmation and decree.

And it is declared by the court that the confirmation in this decree contained is made under Title XII of Book IV of the *the* Recopilacion de Leyes de los Reynos de las Indias, the Spanish law of prescription, and the law of nations.

It is therefore ordered, adjudged, and decreed by the court that the claim for so much of the said land as lies between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, be, and the same hereby is, confirmed to the said J. Francisco Chavez; and that so much of the said land as lies to the west of the present river bed of the Rio Grande del Norte be, and the same hereby is, confirmed to the said pueblo of Isleta; but this confirmation does not confer any right or title to any gold, silver, quicksilver mines, or minerals of the same.

The court declares and specifies that the said land, the claims for which are hereby confirmed, is situated in the county of Valencia, in the Territory of New Mexico, and is bounded on the north by the southern line of the pueblo grant to the pueblo of Isleta, as surveyed under the confirmation of the same by the Congress of the United States; on the east by the old river bed of the Rio Grande del Norte; on the south by the north line of the grant to Ana de Sandoval y Manzanares as established by the decree of this court in the case of J. Francisco Chavez and Solomon Luna vs. United States, numbered 64 on the docket of this court; and on the west by the ceja (being the divide between the Rio Puerco and the Rio del Norte) of the Rio Puerco; and that the area of the said land is estimated to be between thirty and thirty-five thousand acres.

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In the Court of Private Land Claims.

J. FRANCISCO CHAVES	}	274.
vs.		
THE UNITED STATES.		

## OPINION.

The questions presented for consideration in this case are, first, as to the boundaries of the land granted, and, second, whether the plaintiff, J. Francisco Chaves, or his copetitioner, the pueblo of Isleta, is so connected with the title as to authorize this proceeding. The facts are as follows: On November 5, 1716, the Spanish governor of New Mexico

made to Captain Antonio Gutierrez a grant of a tract of land described as bounded "on the north by an arroyo with some cottonwood trees that comes down from the hills; on the south by the pueblo of San Clemente; on the east, the Río del Norte; on the west, the hills of the Puero River." All these boundary calls are well-known objects except that on the north, and of the location of the latter there is no evidence. In 1785, Clemente Gutierrez having died, in a proceeding to partition his estate an inventory of his estate was made by his widow, who gave her name as Maria Apolonia Baca, and among other tracts of land listed was one described as "the rancho commonly called San Clemente, Barrancas, and Los Pinos." San Clemente was a well-known abandoned Indian pueblo. Barrancas was a well-known bluff on the Río Grande River, which formed the south boundary of the pueblo grant to the Indians of the pueblo of Isleta. Los Pinos was a well-known grove of pines along the Río Grande River, between the other named points. In the partition proceeding referred to this tract of land was distributed in individual parts among the widow and children of Clemente Gutierrez. On May 3rd, 1808, Lorenzo Gutierrez delivered to the pueblo of Isleta a statement to the effect that he was the administrator of the estate of his mother, Josefa Polonia Baca, and that his predecessor, Mariano de la Pena, had conveyed to the Indians of the pueblo of Isleta the lands of his mother from the boundary of the pueblo to that of Los Lentes, and that the deed was in the possession of the alcalde of the first district of Albuquerque.

81 Lorenzo Gutierrez was the son of Clemente Gutierrez, and Mariano de la Pena was the husband of the daughter of Clemente Gutierrez. The Los Lentes were a settlement having a tract of land the north boundary of which was a short distance north of the abandoned San Clemente pueblo. After the making the grant to Antonio Gutierrez the Río Grande formed a new channel west of the grove of pines for the entire distance from the Barrancas to San Clemente, and the tract lying between the old and new channels became known as Bosque de los Pinos.

In the years 1819 and 1821, by different deeds, a number of the children and heirs of Clemente Gutierrez conveyed the Bosque de los Pinos to Francisco Xavier Chaves, giving the line of the pueblo grant as the north boundary, and the line of Los Lentes as the south boundary. The plaintiff J. Francisco Chaves is a descendant and inherits from Francisco Xavier Chaves. In the year 1822 the alcalde of the district, in a proceeding for that purpose, established the boundary line between the tract in question as the lands of the pueblo of Isleta, and the lands of Los Lentes. In 1826 the pueblo of Isleta made complaint to the governor of the Territory against a man who had made an unauthorized settlement in the tract in which they asserted their ownership, and that they had purchased the tract from "the house of Gutierrez." The Bosque de los Pinos has been in the possession of Francisco Xavier Chaves and his descendants since his purchase, and the pueblo of Isleta has been in possession of the remainder of the tract for a time beyond the memory of man. From these circumstances we think it is a fair inference that Clemente Gutierrez was the descendant and heir of Antonio Gutierrez. There is no reason to say that he was not. It is more probable that he inherited the title from Antonio Gutierrez than that he was a stranger to

the title. Clemente Gutierrez and those deriving title under him were in the possession of the land from a time years prior to the distribution of the estate in 1785, and have continued in that possession from that time to the present, at all times exercising dominion over it, claiming ownership under the inheritance from Clemente Gutierrez. Under Spanish and Mexican law, as we think, this was sufficient to establish ownership. By law 1, book 4, title 15, of the *Recopilacion*, it was

82 provided that a title by prescription could be acquired, as against the Crown, of cities, towns, and villages, &c., by a possession of forty years. (See *New Orleans vs. United States*, 10 Peters, 724.) The *Recopilacion* and the *Partidas* were the fundamental laws of Spain (10 Peters, 724). By laws 9, 14, and 15, title 29, *Partida* 3, it was provided that an inheritance was such a "just title" as was requisite to become the basis of title by prescription. By law 14, title 12, book 4, of the *Recopilacion* (2 White, 52), the right to acquire title by prescription against the Crown was recognized as applicable to public lands. The provisions and principles of this law were recognized and continued in force as to public lands by the 2nd article of the royal cedula of 1754. The fundamental principles of Spanish law as found in the *Recopilacion* and in the *Partidas* were not set aside by the independence of Mexico, but continued to be regarded and respected as the law of that country after independence. From a book entitled *Collection of the Laws and Decrees of the Cortes of Spain*, reputed to be in force in the Republic of the United States of Mexico (Mexico, 1829, press of Galvan), we quote:

"The independence of Mexico being fortunately realized by the occupation of its capital on the 27th of September, 1821, and the destruction of the viceregal government, although the bonds of dependence with Spain were broken forever, the laws that regulated the duties and rights of those who composed this new society could not and ought not remain without force, for, not being possible to renew them except after the lapse of time and by competent authorities, the sudden abolishment of all of them would be the same as the establishment of absolute anarchy when order was most needed. Thus it is that, with exception of those laws that conflict directly with the memorable plan of *Iguala* and the new order of things it created, all others that have emanated from the King of Spain and from the sovereign authority recognized until that day, were observed and respected, lawsuits were decided by them, justice was administered under them, and Mexicans adjusted their social life to their tenor. From this it resulted that the Spanish codes, which

83 it has not yet been possible to substitute by other new ones, are eagerly sought for by the judges, professors, and even by plain citizens, in as much as they find in them the guide for their actions, the guarantee of their reciprocal rights, and the rule for their procedure."

We think, therefore, that forty years' possession proceeding upon a title by inheritance is sufficient evidence of a perfect title to the whole tract so possessed as against both Spain and Mexico, and sufficient to show a connection of such possession with the original grant.

In the recent case of *United States vs. Chaves*, 159 U. S., 451, it is said: "We do not wish to be understood as undervaluing the fact of a possession so long and uninterrupted as disclosed in this case. Without

going at length into the subject, it may be safely said that by the weight of authority, as well as by preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse and uninterrupted possession for twenty years, and that such rule will be applied as *presumptio juris et de jure* wherever by possibility a right may be acquired in any manner known to the law. 1 Greenleaf Ev., 12th ed., sec. 17; *Richard vs. Williams*, 7 Wheat., 59, 109; *Coolidge vs. Learned*, 8 Pick., 503. Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time accompanied by acts done, or other circumstances, may warrant the jury in presuming a grant or title by record. Thus, also, though lapse of time does not of itself furnish a conclusive bar to the title of the sovereign, agreeably to the maxim *nullum tempus occurrit regi*, yet if the adverse claim could have had a legal commencement juries are advised or instructed to presume such commencement, after many years of uninterrupted possession or enjoyment. Accordingly, royal grants have been thus found by the jury after an indefinitely long continued peaceful enjoyment, accompanied by the usual acts of ownership. 1 Greenl. Ev., sec. 45. The principle on which this doctrine rests is one of general jurisprudence, and is recognized in the Roman law and the codes founded thereon, Best's Principles of Evidence, sec. 366, and was therefore a feature of the Mexican law at the time of the cession."

84 We are justified in supposing that this language was intended for our guidance, and we think it is aptly applicable to the facts of this case.

On the whole case, we think the evidence is sufficient to show a title such is entitled to be confirmed as a perfect title.

There will be a confirmation of the tract known as *Bosque de los Pinos* to J. Francisco Chaves, and the tract claimed by the pueblo of Isleta will be confirmed to the pueblo of Isleta.

The decree should definitely describe the boundaries of each tract, the north boundary being at the south line of the pueblo grant to the pueblo of Isleta as surveyed under the confirmation of the same by Congress.

(Signed)

HENRY C. SLUSS,  
*Associate Justice.*

(Indorsed:) 274. J. Francisco Chaves vs. United States. Opinion. Filed in the office of the clerk of the Court of Private Land Claims June 2d, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

85 DISSENTING OPINION OF MR. JUSTICE MURRAY.

In the Court of Private Land Claims.

J. FRANCISCO CHAVES AND THE  
Pueblo of Isleta  
*vs.*  
UNITED STATES.

No. 274. *Bosque de los Pinos.*

The claims in this case were filed under the provision of section 8 of the act of March 3rd, 1891, which provides for the confirmation of titles



to land derived from the Spanish or Mexican Governments that was complete and perfect at the date when the United States acquired sovereignty therein, etc.

The grant which is the basis of the claim was made by the Spanish Government on the 5th day of November, 1716, to one Antonio Gutierrez. The grant is genuine, but was not confirmed as required by article 5 of the royal instruction of October 15, 1754.

Hall's Mexican Law, page 28.

It is claimed by counsel for petitioners:

That the land originally granted to Antonio Gutierrez was transferred by him to Diego Padilla, and that Diego Padilla conveyed to Diego Borrego, who conveyed the same to Nicolas de Chaves, these conveyances being made in the years 1734 and 1736. It also appears from archive No. 371 in the surveyor-general's office that some time prior to the year 1785 the land claimed had become the property of one Clemente Gutierrez. The petitioners claim under deeds from the heirs of Clemente Gutierrez. It does not appear how Clemente Gutierrez acquired possession or title to the land, nor does it appear that he was in any way related to the original grantee or to Nicolas de Chaves. The petitioners claim under the grant to Antonio Gutierrez, but introduced on the trial deeds from the heirs of Clemente Gutierrez. It was admitted by counsel at the trial that he had failed to connect the claimants with Antonio Gutierrez by record or parol evidence. The claim must therefore stand alone on deeds introduced on the trial (not mentioned in the petition) from the heirs of Clemente Gutierrez. The court is asked to presume that Clemente Gutierrez was an heir of Antonio Gutierrez and to connect the petitioners with the grantee by a regular chain of title. It must further presume that Clemente Gutierrez had in some way acquired the title from Nicolas de Chaves. But if these difficulties were out of the way this is

86 not such a claim as the court is authorized to confirm by the provisions of the 8th section of the act of March 3rd, 1891. It is not pretended that the grant was ever confirmed as required by the royal instructions of 1754. The grant is therefore incomplete and imperfect and is barred by the statute of limitations, not having been filed until 1896. If the court shall be governed by the admission of petitioner's counsel, that he had failed by evidence to connect the petitioners with the grantee, this court has no jurisdiction to adjudicate the claim. A claim based on deeds from private parties unconnected with a grant or some other form of title made by an officer of the Spanish or Mexican Government authorized by law to make it is not a claim upon a title lawfully and regularly derived from the Government of Spain or Mexico.

See section 13, act of March 3rd, 1891, Reynolds' Compilation, page 14.

A majority of my brethren are of the opinion that forty years' possession and occupation of the land perfected the title by prescription, and being so perfected according to the laws of Spain and Mexico, it is such a claim as this court is authorized to confirm. This brings me to an examination of the law of prescription. In the first place, the maxim "Nullum tempus occurrit regi" applies to the Crown of Spain and the Republic of Mexico. The vacant public lands belonged to the Crown. The King is the source of all law. So, if the position assumed by the court is correct, the right to prescribe against the King must be found in



some law, order, or decree to which he has given his assent. The law of prescription is as old as the civil law. Justinian fixes the time in which possessory title to immovable things may be acquired at 26 years, but such title would not enable the party to sustain an action for the recovery of the property if possession was lost. There is some apparent confusion in the laws in force in Spain on the question of prescription, but an examination of the character of things prescribed by the two kinds of prescription, "immemorial and temporal," the difficulty is removed. Immemorial and temporal prescription is discussed together, when, in the very nature of the things prescribed and the manner of proving

rights by prescription, they should be treated separate. I can better illustrate by reference to 1st White's Recompilation, pages 91, 92, and 93. It is there said: "Prescription is to hold the property or thing of another for a certain time, and to make it thereby one's own, so that the right owner cannot afterwards deprive you of it. To constitute prescription, good faith (*buena fe*), just title, and a capacity of the thing for the purpose, and of the person who prescribes, are necessary; as also continued or uninterrupted possession for a determinate time." "Just title consists in the cause or consideration by which possession of the thing is obtained, being one of those by reason of which dominion is acquir'd—as purchase, gift, inheritance, etc."

This definition is too general to be applied to immemorial prescription, or to temporal prescription when possession is acquired without just title. "Temporal prescription is confined or limited to a certain number of years. To this sort belong, 1st, the limitation of a year in which the claim to the penalty incurred by judicial bail for not producing the person bailed is prescribed. The prescription of three years in which personal property is acquired, \* \* \* . The prescription of ten years, in which real property (*las raices*) is acquired among persons present, \* \* \* . That of 20 years, which prescribes the right of absent persons to real property \* \* \* . That of 30 years, in which property generally is acquired, even without good faith \* \* \* ."

1 White's Recompilation, pages 95, 96.

Thirty years' possession of land without good faith, and, I will add, on just title, will enable the possessor to hold by prescription against a private party.

The rule of law requiring good faith and just title to enable a possessor of land to avail himself of prescription is necessarily confined to cases of purchase, gift, or inheritance, and therefore cannot be applied to immemorial prescription, nor to cases where parties acquire possession of land without title. Immemorial prescription proceeds upon the idea that the possessor never had title, or from lapse of time (forty years) is unable to produce it. Possession, therefore, must be proven "by witnesses of good fame or character, who depose to having seen the person in possession of the thing or property for 40 years, and

88 having heard their ancestors say that they never heard anything to the contrary."

1 White's, page 95.

As before stated, this kind of prescription has no application to cases where parties are in possession of land claiming under any sort of title, either from the Government or deeds from private parties, but is expressly confined "to the seign'ory or dominion of cities, towns, and

civil and criminal jurisdictions, but not to that which kings possess by their preeminence and prerogative, nor taxes, nor tributes." (Id., 95.)

The royal instruction of October 15, 1754, with slight modification, was in force in Spain at the date of Mexican independence. It will be found in Reynolds' Compilation, pages 50, 51, 52, 53, 54, 55, 56, and 57. This law provided a complete system for the settlement of titles to land in the Kingdom which had been issued prior and subsequent to the year 1700. Parties long in possession of land without title prior to the year 1700 were allowed to prove such long possession as just title by prescription, "with the understanding that if said royal lands are not cultivated or *farmed* they give them the term of three months provided by law 11 of said book and title, or that which appears best for them to do, so with notice that on the contrary they will be granted to whoever denounces them, with the same obligation to cultivate them." This was an act of grace and favor by the Crown to persons long in possession without title. It is not a recognition by the King that title had been acquired by long possession, but, on the contrary, they were permitted to acquire title on the conditions that within the time prescribed the land should be cultivated as prescribed by law; otherwise it was to be granted to others on the same condition, to cultivate it. It will be noticed that all persons claiming land by title of any kind issued by the King's officers, without reference to the length of time they had been in possession, were required to submit their titles to the proper officers and have the fact of such presentation noted on the title papers.

No one going into possession without title subsequent to the year 1700 were allowed the privilege given to those long in possession prior to the year 1700, though parties might have been in possession more  
89 than forty years prior to the year 1700 to the date of the royal instructions. On the contrary, land so held "shall be adjudged to the royal patrimony, although they are farmed, planted, or have factories," if the trespassing holders failed to comply with the requirements of article 7 of said instructions.

Parties in possession under grants made subsequent to the year 1700 which had not been confirmed by the King were required by article 5 of said instructions "to apply for the confirmation thereof to the audiences in their district, and to other officers to whom the power is given by these new instructions." It was the duty of said officers to examine as to whether the sale or composition was made without fraud or collusion, etc., and if it appears that the price of sale and composition, taxes, etc., had been paid, said officers were to issue to them, in the King's name, confirmation of their titles.

I have been unable to find any law of Spain which supports the doctrine that title by prescription could be acquired against the Crown. Neither have I found a single instance where the holders of imperfect titles have been permitted to plead any lapse of time as an excuse for their failure to comply with the requirements of law in relation to the confirmation of their titles.

Mr. Orosco, in his excellent work on Legislation and Jurisprudence on Public Land, published in 1895, discusses at great length the royal instructions of 1754, from which I copy the following extracts: "In the absence of a suit or legitimate interest of a third party, we have already

seen that the possessor has a right to demand from the Government a revalidation of his title, and in that case it is idle to inquire if a document of that character may operate or not as a just title upon which to build the right of prescription. If the defective title is produced in a suit with a third party who denounces a tract as vacant, we believe that such a title will not be sufficient as a basis for the right of prescription. The title given by a special judge would not convey the dominion in the land sold or granted to a private individual or to a corporation capable

of acquiring until the said title received the royal confirmation,  
 90 hence the possessor of a tract the title to which lacks confirmation or annotation, never in reality acquired title by purchase or grant to the land possessed by him, and in the absence of the 'just title' by dominion, the prescription to acquire the land could not begin to run in his favor, as the requirements of confirmation was prescribed by law; ignorance of its being necessary cannot be alleged, for in no case will ignorance of the laws of the country excuse any one."

"Unconfirmed titles issued from the year 1700 on are only valid by the new payments which the interested parties may make into the public treasury in accordance with what may be provided in this regard by the royal audiences and by the solemn requirements of confirmation which the said audiences shall issue in the name of the sovereign. This is different from what happens with titles issued prior to 1700, which do not require confirmation, and with regard to which it is not necessary to make new payments for their complete validity agreeably with what we have said at the proper place."

"The provision provides that there shall be made a new payment to be fixed by the prudent discretion of the royal audiences as a condition to the issuance of confirmation for a title that is devoid if made subsequent to the year 1699 has not been repealed. Therefore, if a holder of a title of that kind has recourse at the present day to the president of the republic, asking that the defects in his title be corrected, he will certainly be obliged to pay into the national treasury such sum of money as the executive equitably and prudently may fix, and the executive can not wholly dispense with this payment, only when he is expressly given the authority to dispense with taxes and other property of the public treasury."

"Titles lacking confirmation is certainly insufficient to justify the dominion of a tract of land as against the nation, for the requisites of confirmation is material and has been dispensed with only in the case of titles prior to 1700, on condition that they were to be presented before the subdelegates or royal commissioner and duly annotated by them."

91 Without pursuing this further, it is quite clear to me that the grant in this case is incomplete and imperfect and not in any way affected by prescription. Tested by the laws of Spain and Mexico, to which we are limited by the act creating the court, on all the grounds herein set out, the claim should be rejected and the petition dismissed.

(Signed)

WM. W. MURRAY,  
*Associate Justice.*

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## UNITED STATES OF AMERICA, ss.

Court of Private Land Claims, Santa Fe district.

J. FRANCISCO CHAVES AND PUEBLO OF ISLETA,	}	No. 275. Joaquin Sedillo grant.
plaintiff and appellee,		
<i>vs.</i>		
THE UNITED STATES, DEFENDANT AND APPELLANT.		

The above-named defendant, The United States, considering itself aggrieved by the decree entered on the 2nd day of June, 1897, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,  
*U. S. Attorney for Defendant and Appellant.*

It is ordered that an appeal be, and hereby is, allowed as prayed for. This Oct. 11, 1897.

JOSEPH R. REED, *Chief Justice.*

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*Citation on appeal to Supreme Court.*

UNITED STATES OF AMERICA, ss:

*The President of the United States to J. Francisco Chavez and Pueblo of Isleta, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, being cause No. 274 on the docket of said Court of Private Land Claims, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,  
*Associate Justice, Court of Private Land Claims.*

We hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this sixteenth day of October, 1897.

F. W. CLANCY,  
*Attorney for J. Francisco Chavez.*

G. L. SOLIGNAC,  
*Attorney for Pueblo of Isleta.*

94 UNITED STATES OF AMERICA,  
*Territory of New Mexico:*

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 93 pages contain a full, true, and perfect transcript of all record entries and proceedings, and of all the files and papers in the cause lately pend'ng in said court in which J. Francisco Chavez and the Pueblo of Isleta were plaintiffs and the United States were defendants, No. 274, as the same appear of record and on file in my office.

Witness my hand and the seal of said court at my office at Santa Fe, New Mexico, this 1st day of December, A. D. 1897.

[SEAL.]

JAMES H. REEDER, *Clerk,*  
Per IRENEO L. CHAVES, *Deputy.*

(Indorsement on cover:) Case No. 16743. Court of Private Land Claims, term No. 208. The United States, appellant, vs. J. Francisco Chavez and Pueblo of Isleta. Filed December 9, 1897. Office Supreme Court of U. S. Received Dec. 9, 1897.

